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Presidential Documents

Title 3—

The President

Memorandum of March 18, 2016

Delegation of Authority Pursuant to Section 102(b) of the Hizballah International Financing Prevention Act of 2015

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authorities vested in the President by section 102(b) of the Hizballah International Financing Prevention Act of 2015 (Public Law 114–102) (the "Act").

Any reference in this memorandum to the Act shall be deemed to be a reference to any future Act that is the same or substantially the same as such provision.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, March 18, 2016

[FR Doc. 2016–07615
Filed 3–31–16; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5038; Directorate Identifier 2016–NM–029–AD; Amendment 39–18455; AD 2016–07–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 787–8 and 787–9 airplanes. This AD requires revising the airplane flight manual (AFM) to instruct the flightcrew to avoid abrupt flight control inputs in response to sudden drops in airspeed, and to reinforce the need to disconnect the autopilot before making any manual flight control inputs. This AD was prompted by reports indicating that in certain weather conditions with high moisture content or possible icing, erroneous low airspeed may be displayed to the flightcrew before detection and annunciation via engine-indicating and crew-alerting system (EICAS) messages. We are issuing this AD to ensure that the flightcrew avoids abrupt pilot control inputs in response to an unrealistic, sudden drop in displayed airspeed at high actual airspeed. Abrupt pilot control inputs in this condition could exceed the structural capability of the airplane.

DATES: This AD is effective April 14, 2016.

We must receive comments on this AD by May 16, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5038; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Fnu Winarto, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6659; fax: 425–917–6590; email: *fnu.winarto@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We have received three reports of in-service displayed airspeed anomalies on Model 787 airplanes. We continue to investigate this issue with Boeing; however, the anomalous behavior is consistent with significant water ingestion or simultaneous icing of two or three of the three pitot probes. During each of the reported events, the displayed airspeed rapidly dropped significantly below the actual airplane airspeed. In normal operations, the air data reference system supplies the same airspeed to both the captain and first officer primary flight displays. During one in-service event, with autopilot engaged, the pilot overrode the engaged autopilot in response to the displayed erroneous low airspeed and made significant nose-down manual control inputs. In this situation, there is the potential for large pilot control inputs at high actual airspeed, which could cause the airplane to exceed its structural capability.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires revising the AFM to add a "Non-normal Procedure" for "Airspeed Drop" that instructs the flightcrew to avoid abrupt flight control inputs, and reinforces the need to disconnect the autopilot prior to making any manual flight control inputs.

Interim Action

We consider this AD interim action. The airplane manufacturer is currently developing modifications to the display and crew alerting system, flight control system, and air data system that will address the unsafe condition identified in this AD. Once these modifications are developed, approved, and available, we may consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because large, abrupt pilot control inputs in response to an unrealistic, sudden drop in displayed airspeed at high actual airspeed could exceed the structural capability of the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2016–5038 and Directorate Identifier 2016–NM–029–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 43 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$0	$85	$3,655

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–07–10 The Boeing Company: Amendment 39–18455; Docket No. FAA–2016–5038; Directorate Identifier 2016–NM–029–AD.

(a) Effective Date

This AD is effective April 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8 and 787–9 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports indicating that in certain weather conditions with high moisture content or possible icing, erroneous low airspeed data may be displayed to the flightcrew before detection and annunciation via engine-indicating and crew-alerting system (EICAS) messages. We are issuing this AD to ensure that the flightcrew avoids abrupt pilot control inputs in response to an unrealistic, sudden drop in displayed airspeed at high actual airspeed. Abrupt pilot control inputs could exceed the structural capability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Airplane Flight Manual (AFM) Revision: Operating Procedures

Within 15 days after the effective date of this AD, revise the applicable Boeing 787 AFM to add a "Non-normal Procedure" that includes the information in figure 1 to paragraph (g) of this AD. This may be done by inserting a copy of this AD into the AFM.

Figure 1 to Paragraph (g) of this AD

Airspeed Drop

In the event of a sudden, unrealistic drop in indicated airspeed, do not apply large, abrupt control column inputs. Fly the airplane with normal pitch and power settings. If manual flight is needed, disconnect the autopilot prior to making manual flight control inputs.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

For more information about this AD, contact Fnu Winarto, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6659; fax: 425–917–6590; email: *fnu.winarto@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued in Renton, Washington, on March 25, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07190 Filed 3–31–16; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AE16

Alternative to Fingerprinting Requirement for Foreign Natural Persons

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is amending existing Commission regulations to establish an alternative to fingerprinting to evaluate the fitness of natural persons who are required to submit fingerprints under the Commission’s regulations and who have not resided in the United States since reaching 18 years of age (“Final Rule”).

DATES: The Final Rule is effective on May 2, 2016.

FOR FURTHER INFORMATION CONTACT: Katherine Driscoll, Associate Chief Counsel, 202–418–5544, *kdriscoll@cftc.gov;* Jacob Chachkin, Special Counsel, 202–418–5496, *jchachkin@cftc.gov;* or Adam Kezsbom, Special Counsel, 202–418–5372, *akezsbom@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Proposal

On January 12, 2016, the Commission published a Notice of Proposed Rulemaking (“Proposal”)[1] to amend the requirement that, pursuant to the registration process for determining a registrant’s fitness in part 3 of the Commission’s regulations, natural persons[2] that wish to be principals[3] or associated persons[4] of Commission registrants,[5] or who are responsible for entry of orders from an FB’s or FT’s own account, submit their fingerprints (the “Fingerprinting Requirement”).[6] The Proposal contemplated adding a new paragraph (e) to the existing list of exemptions from the Fingerprinting Requirement in § 3.21[7] to, among other things, codify and clarify the alternative to the Fingerprinting Requirement provided by CFTC Staff Letter No. 12–49[8] and CFTC Staff Letter No. 13–29[9] (“DSIO No-Action Letters”). In particular, the Commission proposed adding an alternative to the requirement to provide fingerprints when applying for Commission registration for natural persons who have not resided in the United States since reaching 18 years of age. The Proposal allowed any such person's registered firm to complete a criminal history background check in lieu of submitting fingerprints for such person.[10]

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[1] Alternative to Fingerprinting Requirement for Foreign Natural Persons, 81 FR 1359 (Jan. 12, 2016).

[2] As used herein, the terms “natural person” and “individual” have the same meaning.

[3] *See* the definition of principal in Commission regulation 3.1(a). 17 CFR 3.1(a).

[4] An “associated person” is any natural person who is associated in certain capacities with a futures commission merchant (“FCM”), retail foreign exchange dealer (“RFED”), introducing broker (“IB”), commodity pool operator (“CPO”), commodity trading advisor (“CTA”), swap dealer (“SD”), major swap participant (“MSP”), or leverage transaction merchant (“LTM”). 17 CFR 1.3(aa).

For the definitions of these registration categories (other than RFED), see Section 1a of the Commodity Exchange Act (“CEA” or “Act”) and Commission regulation 1.3. 7 U.S.C. 1a and 17 CFR 1.3. For the definition of RFED, see Commission regulation 5.1(h). 17 CFR 5.1(h).

[5] Subject to certain exceptions and exclusions, persons engaging in specified activities involving commodity interests are required pursuant to the CEA and/or Commission regulations to register with the Commission in certain registration categories. These include registration as an FCM, RFED, IB, CPO, CTA, SD, MSP, LTM, floor broker (“FB”), and floor trader (“FT”). For the definitions of FB and FT, see Section 1a of the CEA and Commission regulation 1.3. 7 U.S.C. 1a and 17 CFR 1.3.

[6] Currently, the Commission may, directly or indirectly, require fingerprinting pursuant to Commission regulations 3.10(a)(2); 3.11(a)(1); 3.12(c)(3), d(2), f(3), or (i)(3); 3.40(a)(1), (a)(2), or (b); 3.44(a)(5) or (c); or 3.46(a)(3). 17 CFR 3.10(a)(2); 3.11(a)(1); 3.12(c)(3), d(2), f(3), and (i)(3); 3.40(a)(1), (a)(2), and (b); 3.44(a)(5) and (c); and 3.46(a)(3).

In support of its initial promulgation of the fingerprinting requirements, the Commission stated that these requirements “are necessary to permit improvements in the Commission’s background checking of applicants for registration, to permit positive identification of certain individuals with common names, to reduce the number of applications filed by individuals who are unfit for registration, and to facilitate fitness reviews of registrants on a spot and periodic basis.” *See* Revision of Registration Regulations; Final Rules; Designation of New Part, 45 FR 80485, 80485 (Dec. 5, 1980).

[7] Commission regulation 3.21 provides exemptions to the Fingerprinting Requirement, subject to certain conditions, for persons whose fingerprints have recently been identified and processed by the Federal Bureau of Investigation, for persons whose application for initial registration with the Commission in any capacity was recently granted, for persons that have a current Form 8–R on file with the Commission or National Futures Association (“NFA”), and for principals that are outside directors. 17 CFR 3.21.

[8] CFTC Staff Letter No. 12–49 (Dec. 11, 2012), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/12-49.pdf.*

[9] CFTC Staff Letter No. 13–29 (Jun. 21, 2013), *available at http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/13-29.pdf.*

The Commission generally requested comments on the Proposal and also solicited comments on a number of specific matters.[11] For example, the Commission solicited comments on potential changes to its proposed definition of a foreign natural person, on the scope and effectiveness of the criminal history background check required by the Proposal and any alternatives thereto, and on the Commission's analysis of the costs and benefits of the Proposal. The comment period for the Proposal ended on February 11, 2016.

II. Summary of Comments

The Commission received two relevant comments in response to the Proposal—one from Sutherland Asbill & Brennan LLP on behalf of The Commercial Energy Working Group ("The Working Group") and one from Joyce Dillard ("Dillard").[12] The Working Group supported the Proposal as a means of alleviating some of, what The Working Group described as, "the undue burdens associated with providing a fingerprint card pursuant to Part 3 of the Commission's regulations." However, The Working Group requested that the Commission expand the Proposal to all natural persons that are principals or associated persons of registrants subject to the Fingerprinting Requirement. The Working Group stated that "[t]his approach, rooted in fairness, would provide equal treatment to U.S. residents and non-U.S. residents alike," but provided no further rationale for its approach. Conversely, Dillard did not support the Proposal, and stated that fingerprinting should be required without alternative.

III. Final Rule

After careful consideration, the Commission is adopting the Final Rule as proposed. The Commission is not expanding the Final Rule to cover persons other than Foreign Natural Persons (as defined below) as requested by The Working Group because, while there are limitations on the usefulness of fingerprints of foreign nationals, fingerprinting is an expedient way to investigate whether someone has a criminal record in the United States. For instance, in the United States, fingerprints may be checked for possible matches against existing repositories of fingerprints quickly and efficiently.

As discussed in the Proposal, the Commission believes the Final Rule, in providing certainty to market participants by way of Commission regulation, makes the commodity interest markets it oversees more liquid, competitive, and accessible by enabling Foreign Natural Persons to demonstrate that they meet the minimum standards for fitness and competency without undue burden. The alternative to fingerprinting removes an impediment to participation in United States' markets by Foreign Natural Persons while also ensuring the continued protection of market participants and the public. Further, the Commission believes that, by providing an alternative for Foreign Natural Persons, the Final Rule is consistent with the principles of international comity.

Section 3.21(e)(2) provides that the obligation to provide a fingerprint card for a Foreign Natural Person under part 3 of the Commission's regulations shall be deemed satisfied for a Certifying Firm (as defined below) if: (a) Such Certifying Firm causes a criminal history background check of such Foreign Natural Person to be performed; (b) such criminal history background check does not reveal any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the CEA,[13] other than those disclosed to NFA; and (c) a person authorized by such Certifying Firm submits, in reliance on such criminal history background check, a certification by such Certifying Firm to NFA.

The certification must: (i) State that the conditions described above have been satisfied; and (ii) be signed by a person authorized by such Certifying Firm to make such certification. In addition, each criminal history background check must: (a) Be of a type that would reveal all matters listed under Sections 8a(2)(D) or 8a(3)(D), (E), or (H) of the CEA[14] relating to the Foreign Natural Person and (b) be completed not more than one calendar year prior to the date that such Certifying Firm submits the certification to NFA described in the Final Rule.

In terms of definitions, § 3.21(e)(1)(i) defines Foreign Natural Person, solely for purposes of paragraph (e), as any natural person who has not resided in the United States since reaching the age of 18 years. Also, § 3.21(e)(1)(ii) defines Certifying Firm, also solely for purposes of paragraph (e), with respect to natural persons acting in certain specified capacities in relation to the firm.

By way of recordkeeping, § 3.21(e)(3) requires that the Certifying Firm maintain, in accordance with Commission regulation 1.31, records documenting each criminal history background check and the results thereof.[15]

As discussed in the Proposal, the Final Rule supersedes the DSIO No-Action Letters without prejudice to those that were relying on either of the DSIO No-Action Letters and had satisfied the requirements thereof prior to January 12, 2016, the date the Proposal was published in the **Federal Register**.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[16] requires Federal agencies, in promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission received no comments with respect to the RFA.

As discussed in the Proposal, the Final Rule affects certain FCMs, RFEDs, IBs, CPOs, CTAs, SDs, MSPs, LTMs, FBs, and FTs that wish to take advantage of the alternative to fingerprinting to evaluate the fitness of their Foreign Natural Persons for which fingerprints must be submitted to NFA.[17] The Commission has previously determined that FCMs, RFEDS, CPOs, SDs, MSPs, and LTMs are not small entities for purposes of the RFA.[18] Therefore, the requirements of the RFA do not apply to those entities. With respect to CTAs, FBs, FTs, and IBs, the Commission has found it appropriate to consider whether such registrants should be deemed small entities for purposes of the RFA on a case-by-case basis, in the context of the particular Commission regulation at issue.[19] As certain of these registrants may be small entities for purposes of the RFA, the Commission considered whether the Final Rule would have a significant economic impact on such registrants. As discussed in the Proposal, the Final Rule solely provides an optional alternative to complying with the Fingerprinting Requirement, which already applies to such registrants, and will, therefore, not impose any new regulatory obligations on affected registrants. The Final Rule is not expected to impose any new burdens on market participants. Rather, to the extent that the Final Rule provides an alternative means to comply with the Fingerprinting Requirement and is elected by a market participant, the Commission believes it is reasonable to infer that the alternative is less burdensome to such participant. The Commission does not, therefore, expect small entities to incur any additional costs as a result of the Final Rule. Consequently, the Commission finds that no significant economic impact on small entities will result from the Final Rule.

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[10] The Commission has delegated to NFA, a registered futures association under Section 17 of the CEA, the registration functions set forth in subparts A, B, and C of part 3 of the Commission's regulations, including the collection and review of a completed Form 8–R and related fingerprint submissions from each natural person completing a Form 8–R. *See* 17 CFR 3.2(a).

[11] Proposal, 81 FR at 1361.

[12] The Commission also received two comments that were not relevant to the Proposal. All of the comments are available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1657.*

[13] 7 U.S.C. 12a(2) and (3).

[14] 7 U.S.C. 12a(2)(D) and 12a(3)(D), (E), and (H). These provisions of Sections 8a(2) and (3) of the CEA generally relate to criminal convictions.

[15] 17 CFR 1.31.

[16] 5 U.S.C. 601 *et seq.*

[17] The Final Rule also directly affects certain of such individuals; however, the Commission has noted that the RFA, by its terms, does not apply to individuals. *See* 48 FR 14933, 14954 n.115 (Apr. 6,

Accordingly, for the reasons stated above, the Commission believes that the Final Rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the Final Rule being published today by this **Federal Register** release will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

1. Background

The Paperwork Reduction Act of 1995 ("PRA")[20] imposes certain requirements on Federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA.

As discussed in the Proposal, the Final Rule contains collections of information for which the Commission has previously received control numbers from the Office of Management and Budget ("OMB"). The titles for these collections of information are "Registration under the Commodity Exchange Act, OMB control number 3038–0023"[21] and "Registration of Swap Dealers and Major Swap Participants, OMB control number 3038–0072."[22]

The responses to these collections of information are mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by OMB.

The collection of information in the Final Rule provides an optional alternative to complying with the Fingerprinting Requirement (as described above). Eligible persons have the option to elect the certification process, but no obligation to do so. For this reason, except to the extent that the Commission has amended the subject OMB control numbers for PRA purposes to reflect the alternative certification process, the Final Rule is not expected to impose any new burdens on market participants. Rather, to the extent that the Final Rule provides an alternative means to comply with the Fingerprinting Requirement and is elected by market participants, it is reasonable for the Commission to infer that the alternative is less burdensome to such participants.

2. Revisions to Collections 3038–0023 and 3038–0072

Collections 3038–0023 and 3038–0072 are currently in force with their control numbers having been provided by OMB.

As discussed above, the Final Rule incorporates an alternative to fingerprinting to evaluate the fitness of certain Foreign Natural Persons. In order to qualify for this alternative, the Certifying Firm must take the steps required pursuant to the Final Rule, including submitting the required certification to NFA and maintaining records of the criminal history background check and the results thereof. Requiring such actions requires revisions to collections 3038–0023 and 3038–0072. Accordingly, the Commission submitted a request to amend each of collections 3038–0023 and 3038–0072 to OMB and invited public comment on its paperwork burdens in the Proposal. In particular, as further described in the Proposal, the Commission estimates that approximately 198 FCMs, RFEDs, IBs, CPOs, CTAs, LTMs, FBs, and FTs and 2 SDs and MSPs will submit the required certification[23] and, accordingly, estimates the additional hour burdens below.

a. Estimated Additional Hour Burden for Collection 3038–0023

Collection 3038–0023 relates to collections of information from FCMs, RFEDs, IBs, CPOs, CTAs, LTMs, FBs, and FTs. The estimated additional hour burden for collection 3038–0023 of 495 hours is calculated as follows:

Number of registrants: 198.

Frequency of collection: As needed.

Estimated annual responses per registrant: 1.

Estimated aggregate number of annual responses: 198.

Estimated annual hour burden per registrant: 2.5.[24]

Estimated aggregate annual hour burden: 495 (198 registrants × 2.5 hours per registrant).

b. Estimated Additional Hour Burden for Collection 3038–0072

Collection 3038–0072 relates to collections of information from SDs and MSPs. The estimated additional hour

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1983). Therefore, no analysis on the economic impact of this rule on individuals is provided.

[18] *See* Policy Statement and Establishment of Definitions of "Small Entities" for Purposes of the Regulatory Flexibility Act, 47 FR 18618 (Apr. 30, 1982) (FCMs and CPOs); Leverage Transactions, 54 FR 41068 (Oct. 5, 1989) (LTMs); Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55410, 55416 (Sept. 10, 2010) (RFEDs); and Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs).

[19] *See* 47 FR at 18620 (CTAs and FBs); Registration of Floor Traders; Mandatory Ethics Training for Registrants; Suspension of Registrants Charged With Felonies, 58 FR 19575, 19588 (Apr. 15, 1993) (FTs); and Introducing Brokers and Associated Persons of Introducing Brokers, Commodity Trading Advisors and Commodity Pool Operators; Registration and Other Regulatory Requirements, 48 FR 35248, 35276 (Aug. 3, 1983) (IBs).

[20] 44 U.S.C. 3501 *et seq.*

[21] *See* OMB Control No. 3038–0023, *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0023#* (last visited Feb. 24, 2016).

[22] *See* OMB Control No. 3038–0072, *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0072#* (last visited Feb. 24, 2016).

[23] Proposal, 81 FR at 1362.

[24] This collection's burdens are restricted to (i) registrants providing necessary information to commercial service provider(s) to conduct a criminal history background check for a Foreign Natural Person; (ii) registrants preparing and submitting the certification described herein; and (iii) registrants maintaining, in accordance with Commission regulation 1.31, records documenting that the criminal history background check was completed and the results thereof. To the extent that a market participant instead elects to conduct the background check internally, it is reasonable for the Commission to infer that doing so is less burdensome to such participant.

burden for collection 3038–0072 of 5 hours is calculated as follows:

Number of registrants: 2.

Frequency of collection: As needed.

Estimated annual responses per registrant: 1.

Estimated aggregate number of annual responses: 2.

Estimated annual hour burden per registrant: 2.5.[25]

Estimated aggregate annual hour burden: 5 (2 registrants × 2.5 hours per registrant).

3. Information Collection Comments

In the Proposal, the Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above. The Commission did not receive any such comments.

C. Cost-Benefit Considerations

Section 15(a) of the Act[26] requires the Commission to consider the costs and benefits of its actions before issuing a regulation under the Act. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (i) Protection of market participants and the public; (ii) efficiency, competitiveness and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) considerations.

1. Costs

a. Costs to FCMs, RFEDs, IBs, CPOs, CTAs, SDs, MSPs, LTMs, FBs, FTs, Associated Persons, and Other Foreign Natural Persons

The Final Rule provides an alternative to complying with the Fingerprinting Requirement, which alternative no FCM, RFED, IB, CPO, CTA, SD, MSP, LTM, FB, FT, associated person, or other Foreign Natural Person is required to elect. As such, the Commission believes that the Final Rule does not impose any net cost on such persons, because the Commission presumes that such persons will elect the alternative only if they assess it to have a lower or equal net cost.

b. Other Costs

Because the Final Rule allows FCMs, RFEDs, IBs, CPOs, CTAs, SDs, MSPs, LTMs, FBs, and FTs to submit, subject to the terms and conditions herein, a certification in lieu of a fingerprint card for Foreign Natural Persons, NFA will need to develop a process to review and retain such certifications and consider amending its applications and/or other forms to reflect the availability of this alternative to the Fingerprinting Requirement. The Commission expects that the costs of such activities will not be significant, because NFA has been processing and retaining requests under the DSIO No-Action Letters since their issuance and the changes to NFA's applications and/or other forms to take into account the Final Rule would likely be minimal and could be included in other future unrelated updates.

2. Benefits

The Commission believes that, by establishing an alternative method for evaluating the fitness of Foreign Natural Persons for whom a fingerprint card must currently be submitted, the Final Rule helps keep the United States' commodity interest markets accessible and competitive with other markets around the world by removing an impediment to participation in United States' markets by Foreign Natural Persons while also ensuring the continued protection of market participants and the public. Further, the Commission believes that, by providing an alternative for persons outside the United States, the Final Rule is consistent with the principles of international comity.

3. Commenter's Request

As discussed above, The Working Group requested that the Commission expand the alternative provided in the Proposal to include all natural persons that are principals or associated persons of registrants subject to the Fingerprinting Requirement. The Commission is not making such an expansion, because, while there are limitations on the usefulness of fingerprints of foreign nationals, fingerprinting is an expedient way to investigate whether someone has a criminal record in the United States.

4. Section 15(a) Factors

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. CEA Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (i) Protection of market participants and the public; (ii) efficiency, competitiveness, and financial integrity of futures markets; (iii) price discovery; (iv) sound risk management practices; and (v) other public interest considerations.

i. Protection of Market Participants and the Public

The Final Rule continues to protect the public by ensuring that persons who are currently subject to the Fingerprinting Requirement, whether or not they reside in the United States, must have their fitness reviewed through the completion of a background check.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Final Rule may increase the efficiency and competitiveness of the markets by encouraging more participation in United States markets by Foreign Natural Persons. The Commission does not believe that the integrity of financial markets is harmed because the Final Rule requires that the background check meet the objective standards which rely on the clearly-stated matters under Sections 8a(2)(D) and 8a(3)(D), (E), and (H) of the CEA.

iii. Price Discovery

The Commission generally believes that providing an alternative means of ensuring the fitness of a person who resides outside the United States for purposes of Commission registration, by reducing the burden that the Fingerprinting Requirement could impose on such persons, could reduce impediments to transact on a cross-border basis, increasing participation in commodity interest markets. The Commission believes that such increased participation and the resulting increased liquidity may help to facilitate price discovery.

iv. Sound Risk Management Practices

One of the critically important functions of registration is to allow the Commission to ensure that all futures and swaps industry professionals who deal with the public meet minimum standards of fitness and competency.[27] The fitness investigations that are part of the registration process permit the Commission and/or its delegatees to (a) uncover past misconduct that may disqualify an individual or entity from registration and (b) help determine if such persons have disclosed all matters required to be disclosed in their applications to become registered with the Commission.[28] Having futures and swaps market participants that are not subject to any of the matters that would lead to a disqualification of registration under Sections 8a(2) or (3) of the CEA is one way to help ensure that a Commission registrant will not be a risk to its customers or to the market in general.

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[25] *See* n. 24, *supra.*

[26] 7 U.S.C. 19(a).

[27] *See, e.g.,* Commodity Futures Trading Comm'n, Division of Clearing and Intermediary Oversight, Public Report on the Registration Program of the National Futures Association, June 2010, at 1 (*citing* H.R. REP. NO. 97–565(I), at 48 (1982), *reprinted in* 1982 U.S.C.C.A.N. 3871, 3897–3899).

v. Other Public Interest Considerations

The Commission believes that, by providing an alternative for persons outside the United States, the Final Rule is consistent with the principles of international comity.

List of Subjects in 17 CFR Part 3

Associated persons, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Customer protection, Fingerprinting, Foreign exchange, Futures commission merchants, Introducing brokers, Leverage transaction merchants, Leverage transactions, Major swap participants, Principals, Registration, Reporting and recordkeeping requirements, Retail foreign exchange dealers, Swap dealers, Swaps.

For the reasons set forth in the preamble, the Commodity Futures Trading Commission amends part 3 as follows:

PART 3—REGISTRATION

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23.

■ 2. In § 3.21, add paragraph (e) to read as follows:

§ 3.21 Exemption from fingerprinting requirement in certain cases.

* * * * *

(e) *Foreign natural persons.* (1) For purposes of this paragraph (e):

(i) The term *foreign natural person* means any natural person who has not resided in the United States since reaching the age of 18 years.

(ii) The term *certifying firm* means:

(A) For any natural person that is a principal or associated person of a futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker, or floor trader, such futures commission merchant, retail foreign exchange dealer, swap dealer, major swap participant, introducing broker, commodity pool operator, commodity trading advisor, leverage transaction merchant, floor broker, or floor trader; and

(B) For any natural person that is responsible for, or directs, the entry of orders from a floor broker's or floor trader's own account, such floor broker or floor trader.

(2) Any obligation in this part to provide a fingerprint card for a foreign natural person shall be deemed satisfied with respect to a certifying firm if:

(i) Such certifying firm causes a criminal history background check of such foreign natural person to be performed; and

(ii) The criminal history background check:

(A) Is of a type that would reveal all matters listed under Sections 8a(2)(D) or 8a(3)(D), (E), or (H) of the Act relating to such foreign natural person;

(B) Does not reveal any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the Act, other than those disclosed to the National Futures Association; and

(C) Is completed not more than one calendar year prior to the date that such certifying firm submits the certification described in paragraph (e)(2)(iii) of this section;

(iii) A person authorized by such certifying firm submits, in reliance on such criminal history background check, a certification by such certifying firm to the National Futures Association, that:

(A) States that the conditions of paragraphs (e)(2)(i) and (ii) of this section have been satisfied; and

(B) Is signed by a person authorized by such certifying firm to make such certification.

(3) The certifying firm shall maintain, in accordance with § 1.31 of this chapter, records documenting that the criminal history background check performed pursuant to paragraph (e)(2)(i) of this section was completed and the results thereof.

Issued in Washington, DC, on March 28, 2016, by the Commission.

Robert N. Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Alternative to Fingerprinting Requirement for Foreign Natural Persons—Commission Voting Summary and Chairman's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Massad and Commissioners Bowen and Giancarlo voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman Timothy G. Massad

I support the rule being finalized today, which provides foreign natural persons with an alternative to the fingerprinting requirement that applies to certain participants in our markets. This will reduce unnecessary burdens on foreign individuals while maintaining appropriate standards of fitness and competency. This final rule also continues the Commission's ongoing efforts to codify, where appropriate, and through notice-and-comment rulemaking, no-action relief that previously had been provided by Commission staff.

[FR Doc. 2016–07304 Filed 3–31–16; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

General Rules and Regulations, Securities Exchange Act of 1934

CFR Correction

In Title 17 of the Code of Federal Regulations, part 240 to End, revised as of April 1, 2015, on page 543, § 240.17a–23 is removed and reserved.

[FR Doc. 2016–07561 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

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[28] *See http://www.nfa.futures.org/NFA-registration/index.HTML* (last visited Feb. 24, 2016), stating that "[t]he primary purposes of registration are to screen an applicant's fitness to engage in business as a futures professional and to identify those individuals and organizations whose activities are subject to federal regulation."

Pursuant to Commission regulation 3.60, the Commission may, subject to some limitations, deny, grant with conditions, suspend, revoke, or restrict registration to an applicant if the Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2), 8a(3) or 8a(4) of the Act. 17 CFR 3.60. Sections 8a(2) and 8a(3) of the Act contain an extensive list of matters that provide grounds for refusing or conditioning an applicant's registration, including, without limitation, felony convictions, commodities or securities law violations, bars or other adverse actions taken by financial regulators, and willfully omitting to state any material fact in an application. *See* 7 U.S.C. 12a(2) and (3). *See also* Interpretative Statement With Respect to Section 8a(2)(C) and (E) and Section 8a(3)(J) and (M) of the Commodity Exchange Act, appendix A to part 3 of the Commission's regulations.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Filing of Rate Schedules and Tariffs

CFR Correction

In Title 18 of the Code of Federal Regulations, parts 1 to 399, revised as of April 1, 2015, in § 35.1, make the following changes:

1. On page 270, in paragraphs (d)(2) and (d)(3), add the phrase ", tariffs or service agreements" after the phrase "rate schedules", and

2. On page 270, in paragraph (g), in the first sentence, add the word "service" before the third occurrence of the word "agreement".

[FR Doc. 2016–07564 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Filing of Rate Schedules and Tariffs

CFR Correction

In Title 18 of the Code of Federal Regulations, parts 1 to 399, revised as of April 1, 2015, on page 273, § 35.4 is revised to read as follows:

§ 35.4 Permission to become effective is not approval. [Corrected]

The fact that the Commission permits a rate schedule or tariff, tariff or service agreement or any part thereof or any notice of cancellation to become effective shall not constitute approval by the Commission of such rate schedule or tariff, tariff or service agreement or part thereof or notice of cancellation.

[FR Doc. 2016–07566 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Filing of Rate Schedules and Tariffs

CFR Correction

In Title 18 of the Code of Federal Regulations, parts 1 to 399, revised as of April 1, 2015, on page 275, in § 35.11, in the first sentence, the phrase "a rate schedule, tariff, or service agreement," is revised to read, "a rate schedule or tariff, tariff or service agreement,"; and the phrase "the rate schedule or tariff would become effective" is revised to read "the rate schedule or tariff, tariff or service agreement would become effective". And, in the second sentence, the phrase "under such rate schedule or tariff," is revised to read "under such rate schedule or tariff, tariff or service agreement,".

[FR Doc. 2016–07562 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 281

Natural Gas Curtailment Under the Natural Gas Policy Act of 1978

CFR Correction

In Title 18 of the Code of Federal Regulations, parts 1 to 399, revised as of April 1, 2015, on page 810, in § 281.204, in paragraph (a), in the first sentence and in the last sentence, remove the term "sheets" and add in its place the term "sheets or sections".

[FR Doc. 2016–07548 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1307

Nondiscrimination With Respect to Handicap

CFR Correction

In Title 18 of the Code of Federal Regulations, parts 400 to End, revised as of April 1, 2015, on page 210, in § 1307.4, in paragraph (b)(2), remove the term "activities" and add in its place "aid, benefits, or services".

[FR Doc. 2016–07549 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

Articles Conditionally Free, Subject to a Reduced Rate, etc.

CFR Correction

In Title 19 of the Code of Federal Regulations, parts 0 to 140, revised as of April 1, 2015, remove the term "Customs" and add in its place the term "CBP" in the following places:

1. On page 96, in § 10.1, in the introductory text of paragraph (h)(1), and

2. On page 113, in § 10.31, in paragraph (f), in two places.

[FR Doc. 2016–07554 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 4

Vessels in Foreign and Domestic Trades

CFR Correction

In Title 19 of the Code of Federal Regulations, parts 0 to 140, revised as of April 1, 2015, on page 67, in § 4.88, in paragraph (a), remove the words "with a registry which" and add in their place "with a registry endorsement which".

[FR Doc. 2016–07553 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

Articles Conditionally Free, Subject to a Reduced Rate, etc.

CFR Correction

In Title 19 of the Code of Federal Regulations, parts 0 to 140, revised as of April 1, 2015, on page 259, in § 10.470, revise the section heading to read

“Verification and justification of claim for preferential tariff treatment.”

[FR Doc. 2016–07555 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

Special Classes of Merchandise

CFR Correction

In Title 19 of the Code of Federal Regulations, parts 0 to 140, revised as of April 1, 2015, on page 480, in § 12.74, in paragraph (b)(2), remove the phrase “a period of”.

[FR Doc. 2016–07558 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 24

Customs Financial and Accounting Procedure

CFR Correction

In Title 19 of the Code of Federal Regulations, parts 0 to 140, revised as of April 1, 2015, on page 596, in § 24.22, in paragraph (g)(7), remove the term “Customs” and add “CBP” in its place.

[FR Doc. 2016–07560 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 122

Air Commerce Regulations

CFR Correction

In Title 19 of the Code of Federal Regulations, parts 0 to 140, revised as of April 1, 2015, on page 810, in § 122.24, in paragraph (b), after the paragraph heading, remove the introductory text before the table.

[FR Doc. 2016–07559 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, 524, 528, 529, 556, and 558

[Docket No. FDA–2015–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Changes of Sponsorship

Correction

In rule document 2016–07135 beginning on page 17604 in the issue of Wednesday, March 30, 2016, make the following correction:

§ 524.1044g [Corrected]

■ On page 17608, change amendatory instruction 33 to read as follows:

■ 33. In § 524.1044g, in paragraph (b)(3), remove “000859” and in its place add “069043”.

[FR Doc. C1–2016–07135 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

In Title 26 of the Code of Federal Regulations, part 1, §§ 1.908 to 1.1000, revised as of April 1, 2015, on page 394, in § 1.955A–3, revise the heading for paragraph (e) to read “*Coordination with section 955(b)(3).*”

[FR Doc. 2016–07563 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0199]

Drawbridge Operation Regulation; Tennessee River, Decatur, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Southern Railroad Drawbridge across the Tennessee River, mile 304.4, at Decatur, Alabama. The deviation is necessary to allow the bridge owner time to perform repairs and maintenance essential to the continued safe operation of the drawbridge. This deviation allows the bridge to open to vessel traffic with a two-hour advance notice.

DATES: This deviation is effective from April 4 through April 21, 2016.

ADDRESSES: The docket for this deviation, (USCG–2016–0199) is available at *http://www.regulations.gov*. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Railroad requested a temporary deviation for the Southern Railroad Drawbridge, across the Tennessee River, mile 304.4, at Decatur, Alabama. This deviation allows the bridge to open on signal if at least 2-hours advance notice is given from 7 a.m. to 4:30 p.m., Monday through Thursday, April 4–21, 2016. This deviation is necessary for the bridge owner to replace cross ties, change out the counter weight and install inner guard rails.

The Southern Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that the drawbridge shall open on signal.

The Southern Railroad Drawbridge provides a vertical clearance of 10.52 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted. This temporary deviation has been coordinated with waterway users. No objections were received.

The bridge will not be able to open for emergencies and there are no alternate routes for vessels transiting this section of the Tennessee River. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so the vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 10, 2016.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2016–07439 Filed 3–31–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0232]

Drawbridge Operation Regulation; Shark River (South Channel), Avon, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Railroad Bridge (NJT) across the Shark River (South Channel), mile 0.9, at Avon, NJ. This deviation is necessary to perform urgent bridge repairs. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 7 a.m. to 6 p.m. on April 9, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0232] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION: New Jersey Transit (NJT), that owns and operates the Railroad Bridge (NJT), has requested a temporary deviation from the current operating regulations to perform urgent repairs to the buffers which protect the bridge locks from damage during opening and closing movements. The bridge is a single bascule draw bridge and has a vertical clearance in the closed position of 8 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.751. Under this temporary deviation, the bridge will remain in the closed-to-navigation position from 7 a.m. to 6 p.m. on April 9, 2016 and will open-to-navigation with at least one hour advance notice.

The Shark River is used by a variety of vessels including small U.S. government and public vessels, small commercial vessels, tug and barge, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies with at least one hour advance notice and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 24, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–07357 Filed 3–31–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2015–0053]

RIN 0651–AD01

Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the existing consolidated set of rules relating to the United States Patent and Trademark Office (Office or USPTO) trial practice for *inter partes* review ("IPR"), post-grant review ("PGR"), the transitional program for covered business method patents ("CBM"), and derivation proceedings that implemented provisions of the Leahy-Smith America Invents Act ("AIA") providing for trials before the Office.

DATES: *Effective Date:* This rule is effective May 2, 2016 and applies to all AIA petitions filed on or after the effective date and to any ongoing AIA preliminary proceeding or trial before the Office.

FOR FURTHER INFORMATION CONTACT: Susan L. C. Mitchell, Lead Administrative Patent Judge, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: This final rule amends the existing consolidated set of rules relating to the United States Patent and Trademark Office (Office or USPTO) trial practice for IPR, PGR, CBM, and derivation proceedings that implemented provisions of the AIA providing for trials before the Office, by allowing new testimonial evidence to be submitted with a patent owner's preliminary response, adding a Rule 11-type certification for papers filed in a proceeding, allowing a claim construction approach that emulates the approach used by a district court following *Phillips* v. *AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (hereinafter "a *Phillips*-type or district court-type construction approach") for claims of patents that will expire before entry of a final written decision, and replacing the current page limit with a word count limit for major briefing.

Summary of Major Provisions: In an effort to gauge the effectiveness of the rules governing AIA trials, the Office conducted a nationwide listening tour in April and May of 2014, and in June 2014, published a **Federal Register** Notice asking for public feedback about the AIA trial proceedings. The Office has reviewed carefully the comments and, in response to public input, already has issued a first, final rule, which was published on May 19, 2015. That final rule addressed issues concerning the patent owner's motion to amend, the petitioner's reply brief, and other various changes. For instance, the final rule provided ten additional pages for a patent owner's motion to amend, allowed a claims appendix for a motion to amend, and provided ten additional pages for a petitioner's reply brief, in addition to other changes to conform the rules to the Office's established practices in handling AIA proceedings.

The Office published a second, proposed rule on August 20, 2015, which addressed more significant proposed changes to the rules and proposed revisions to the Office Patent Trial Practice Guide. The Office received comments from the public on these proposed rules, and presents in this **Federal Register** document the following final rules to address the claim construction standard for AIA trials involving soon-to-be expired patents, new testimonial evidence submitted with a patent owner's preliminary response, Rule 11-type certification, and word count for major briefing. The Office will also amend its Office Patent Trial Practice Guide to comport with these rules changes and to reflect developments in practice before the Office concerning how the Office handles additional discovery, live testimony, and confidential information.

The Office anticipates that it will continue to refine the rules governing AIA trials to continue to ensure fairness and efficiency while meeting all congressional mandates. Therefore, the Office continues to encourage comments concerning how the rules may be refined to achieve this goal.

Also, the Office is continuing to pro-actively seek ways to enhance its operations and explore alternative approaches that might improve its handling of post grant administrative trials. As part of this process, the Office published in the **Federal Register** a Request for Comments on a Proposed Pilot Program pertaining to the institution and conduct of the post grant administrative trials by a single judge to provide the public an opportunity to comment on the proposal. Proposed Pilot Program Exploring an Alternative Approach to Institution Decisions in Post Grant Administrative Reviews, 80 FR 51540 (Aug. 25, 2015) ("Proposed Pilot Program"). The Office currently has a panel of three administrative patent judges (APJs) decide whether to institute a trial, and then typically has the same three-APJ panel conduct the trial, if instituted. The Office sought comments on whether to conduct a pilot program under which the determination of whether to institute a trial would be made by a single APJ, with two additional APJs being assigned if a trial was instituted. This public announcement of the proposed pilot program sought to elicit comments, including whether a single APJ institution could potentially improve efficiency while providing high quality decisions and fairness to all sides.

In response to the Request for Comments, the Office received eighteen written submissions from intellectual property organizations, associations, businesses, law firms, patent practitioners, and others. The majority of comments opposed the proposed pilot program; however, several comments supported modified pilot programs. The Office appreciates receiving the comments, and has considered and analyzed them. Taking into account the comments received, the Office has decided not to go forward with the proposed pilot program at this time.

Costs and Benefits: This rulemaking is not economically significant, and is not significant, under Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Background

Development of the Final Rules

On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)), and within one year, the Office implemented rules to govern Office trial practice for AIA trials, including IPR, PGR, CBM, and derivation proceedings pursuant to 35 U.S.C. 135, 316 and 326 and AIA 18(d)(2). *See* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612 (Aug. 14, 2012); Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012); Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 FR 48734 (Aug. 14, 2012). Additionally, the Office published a Patent Trial Practice Guide for the rules to advise the public on the general framework of the regulations, including the structure and times for taking action in each of the new proceedings. *See* Office Patent Trial Practice Guide, 77 FR 48756 (Aug. 14, 2012).

In an effort to gauge the effectiveness of these rules governing AIA trials, the Office conducted a nationwide listening tour in April and May of 2014. During the listening tour, the Office solicited feedback on how to make the trial proceedings more fair and effective by adjusting the rules and guidance where necessary. To elicit even more input, in June of 2014, the Office published a Request for Comments in the **Federal Register** and, at stakeholder request, extended the period for receiving comments to October 16, 2014. *See* Request for Comments on Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 79 FR 36474 (June 27, 2014). The Office addressed all public comments that involved changes to the page limitations for a patent owner's motion to amend or a petitioner's reply brief in a first, final rulemaking. *See* Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 FR 28561 (May 19, 2015). The Office addressed the remaining comments in the second, proposed rulemaking. *See* Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 FR 50720 (Aug. 20, 2015).

In the second, proposed rulemaking, the Office sought comments on the proposed rules involving the application of a *Phillips*-type claim construction for patents expiring during a proceeding, the ability to submit new testimonial evidence in the patent owner preliminary response, a Rule 11-type certification for papers filed in a proceeding, and word count for major briefing. The Office received twenty-eight comments from bar associations, corporations, law firms, and individuals addressing the proposed rules. Many of the comments supported application of a *Phillips*-type construction for claims of a patent that will expire during an AIA proceeding, a patent owner's ability to submit new testimonial evidence in its preliminary response, word count for major briefing, and a Rule-11 type certification. The Office appreciates the thoughtful comments provided by the public, which are available on the USPTO Web site: *http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/comments-amendments-rules-practice-trials.* The Office addresses all of the comments on the proposed rules below.

Claim Construction Standard

In the proposed rules, the Office noted that the application of a *Phillips*-type claim construction for claims of a patent that will expire prior to the issuance of a final written decision is appropriate. 80 FR at 50722. For these patents, the Office proposed to apply a *Phillips*-type standard during the proceeding. *Id.* The Office asked a series of questions to elicit comments concerning when to apply a *Phillips*-type construction. For instance, the Office asked: Should the Office set forth guidelines where a petitioner may determine, before filing a petition, which claim construction approach will be applied by the Office based on the relevant facts? Should the petitioner who believes that the subject patent will expire prior to issuance of a final written decision be required to submit claim interpretation analysis under both a *Phillips*-type and broadest reasonable interpretation approaches or state that either approach yields the same result? Should the Office entertain briefing after a petition is filed, but before a patent owner preliminary response is filed, concerning what standard should be applied? *Id.* The Office also invited comments on any workable and efficient solutions for scenarios where the patent owner chooses to forgo the right to amend claims in an AIA proceeding. *Id.*

The Office has considered carefully the comments and determined to permit either party to request by motion a *Phillips*-type construction if a party certifies that the patent will expire within eighteen months from the entry of the Notice of Filing Date Accorded to Petition. A request by either party for a *Phillips*-type construction must be done by motion, triggering a conference call with the panel to discuss the request to resolve whether such a motion is appropriate under the circumstances and whether any other briefing is necessary for each party to be able to address adequately the appropriate construction standard. For instance, petitioner may be afforded an opportunity to address a *Phillips*-type construction analysis before patent owner is required to file its preliminary response.

Comment 1: As to the claim construction standard the Office uses generally in AIA trial proceedings, many commenters support the Office's continued application of the broadest reasonable interpretation standard to ensure higher quality patents by encouraging more definitive claim drafting, clarifying intended claim scope, and providing a better notice function to the public. Other commenters asserted that because a small number of motions to amend have been granted, the Office should apply a *Phillips*-type construction in all AIA proceedings. These commenters stated that AIA proceedings are meant to be adjudicative; therefore, a differing standard akin to a district court claim construction analysis is appropriate and in the interest of justice. These commenters also assert that neither the difference between "patentability" and "validity," nor the canon of construction calling for preservation of validity as applied in district court, necessitates the application of a broadest reasonable interpretation standard in an AIA proceeding. Also, these commenters asserted that because the majority of patents involved in *inter partes* reviews are also in parallel litigation with a route of appeal to the same reviewing court, using a differing standard for claim construction could lead to inconsistent outcomes, and therefore, is inappropriate.

Response: The Office continues to agree with the comments that stated that applying the broadest reasonable interpretation for a claim is consistent with the Office's long-standing practice in post-issuance proceedings and encourages clear and unambiguous claim drafting. The Office notes that this standard also promotes consistency across all reexaminations, reissues, and AIA proceedings involving the same patent or family of patents before the Office. The Office disagrees that no reasonable opportunity to amend exists, as some comments argued based solely on the number of amendments permitted to date. The Federal Circuit has stated, "[a]lthough the opportunity to amend is cabined in the IPR setting, it is thus nonetheless available," and specifically addressed the prohibition on post-issuance broadening of claims at issue in the case, further stating that at least this restriction on motions to amend "does not distinguish pre-IPR processes or undermine the inferred congressional authorization of the broadest reasonable interpretation standard in IPRs." *In re Cuozzo Speed Techs., LLC,* 793 F.3d 1268, 1278 (Fed. Cir. July 8, 2015), *cert. granted sub nom., Cuozzo Speed Techs. LLC.* v. *Lee,* 136 S. Ct. 890 (mem.) (2016). Also, the Office does not agree that using differing standards for claim construction in different tribunals presents a scenario where inconsistencies are inappropriate. *See In re Swanson,* 540 F.3d 1368, 1377 (Fed. Cir. 2008) (citing *Ethicon, Inc.* v. *Quigg,* 849 F.3d 1422, 1429 & n.3 (Fed. Cir. 1988)) (stating inconsistent findings concerning validity in different proceedings may be appropriate). Appropriate rationales exist to apply the broadest reasonable interpretation claim construction standard when there is an ability to clarify claim scope and to apply a *Phillips* construction when no opportunity to amend exists and claims should be construed to preserve validity if possible.

Applying the broadest reasonable interpretation standard in the proceedings serves an important patent quality assurance function. Therefore, the Office agrees with comments that the application of the broadest reasonable interpretation for claims furthers the congressional goal of providing "a meaningful opportunity to improve patent quality and restore confidence in the presumption of validity that comes with issued patents in court." H.R. Rep. No. 112–98(I) at 48 (2011), *reprinted in,* 2011 USCCAN 67, 78 (discussing post-grant proceedings). Finally, the Office notes that because issued patents can return to the Office through a number of different avenues in addition to AIA trials, it should follow the same claim construction approach in all of its proceedings. Inconsistent results could become an issue if the Office adopted a standard of claim construction other than the broadest reasonable interpretation for post-grant reviews. Specifically, the AIA contemplates that there will be multiple proceedings in the Office, and thus requires the Office to establish rules concerning the relationships between the various proceedings. For example, there may be an *inter partes* review of a patent that is also subject to an *ex parte* reexamination, where the patent is part of a family of co-pending applications all employing the same claim terminology. Difficulties could arise where the Office is handling multiple proceedings with different claim construction standards applicable.

Comment 2: Several comments offered input on the timing and procedure for briefing the issue of the appropriate claim construction approach. One commenter offered that the Office should promulgate guidelines for when petitioner should offer a *Phillips*-type construction in a petition, but not penalize a petitioner for applying an incorrect construction standard, and other commenters asserted that petitioners should not be required to submit both a broadest reasonable interpretation and a *Phillips*-type construction in the petition because it presents too great a burden for petitioner. Some commenters suggested that additional briefing could be provided prior to the patent owner response addressing which standard of claim construction should apply. Some commenters asked that the Office set forth clear rules as to when each standard of claim construction applies so that there is no increase of cost or duration of the proceeding due to contesting which approach should apply.

Several commenters offered a bright-line rule of a fixed period of time to determine when to apply a *Phillips*-type construction. Under this bright-line rule, if a patent expires during the fixed time period, a *Phillips*-type construction approach will apply, and if the patent does not expire during the fixed time period, a broadest reasonable interpretation approach will apply. Some commenters requested a three or four year fixed period of time for which a *Phillips*-type construction would be applied for patents that expire within the time period to account for any appeal to the Federal Circuit and possible remand. One commenter pointed to *Institute Pasteur* v. *Focarino,* 738 F.3d 1337 (Fed. Cir. 2015), to support a three-year, bright-line rule for applying a *Phillips*-type construction, arguing that such a length of time is necessary because the Federal Circuit recognized that no opportunity existed to amend claims in a patent that expired two months after issuance of the Office decision on appeal. Other commenters suggested a bright line rule of applying a *Phillips*-type construction if a petition is filed less than eighteen months before the patent's expiration date because it takes into account the potential time to complete both the preliminary proceeding and trial phases of an AIA proceeding. Others proposed that if a patent expires within two years from the filing of a petition, a *Phillips*-type construction should apply to take into account any possible six-month extension of the proceeding due to good cause. One commenter suggested a flexible approach where a *Phillips*-type construction should be applied if the parties agree to such a construction.

Response: The Office agrees that procedures to determine which claim construction standard applies to a patent that may expire before the conclusion of a proceeding should minimize the cost and burden to the parties, and also offer a full and fair opportunity for each party to present its case under the appropriate approach. The Office agrees that it is too burdensome to require a petitioner to submit in its petition a construction under both a broadest reasonable construction and a *Phillips*-type construction if the petitioner determines that the challenged patent may expire before the end of the proceeding. Application of a bright-line rule applying a specific time period during which, if a patent expires, a *Phillips*-type construction should be applied, is problematic because it does not address the actual question of whether a patent has expired before an AIA proceeding is completed. There is no disagreement that an expired patent cannot be amended; if a patent does not expire during an AIA proceeding, however, it is equally true that it is subject to amendment. The Office declines to speculate as to what may happen after an AIA proceeding has been concluded to determine an appropriate course of action to take during the proceeding as the Office cannot presume that all final written decisions will be appealed.

The Office believes that the best approach to determine when a particular patent will expire is to allow either party to request by motion that a *Phillips*-type construction be applied in the proceeding after certifying that the patent will expire within eighteen months of the filing of the Notice of Filing Date Accorded. This procedure provides a panel with flexibility to address any factual scenario presented by a particular case. The Office agrees with commenters that a motions practice in which the petitioner may be able to brief an alternative construction before patent owner files its preliminary response may be an efficient way to proceed, but such choice is left to the discretion of the panel. Ever mindful of the statutory deadlines that exist in AIA proceedings, such a procedure provides the panel with a way to manage efficiently a proceeding where the claim construction may differ from what a petitioner has presented in its petition.

Comment 3: One commenter suggested that a *Markman*-type proceeding may be held after institution of a trial, but before a patent owner has to file its patent owner response.

Response: Although the timing in some cases may require that the applicable claim construction must be briefed or determined after institution, the Office prefers to resolve the applicable claim construction standard before institution, and ideally, before the patent owner preliminary response deadline has passed. The earlier that the appropriate standard for claim construction may be determined, the more guidance the Office may provide in its institution decision for the parties to conduct the trial, including discovery, appropriately and efficiently, and in some cases, the Office may decide to deny institution when applying the appropriate standard.

Comment 4: One commenter asserted that where claim terms in dispute in an AIA review proceeding have been construed in a final, non-appealable court decision involving the same parties or their privies, the Office should adopt that claim construction as a matter of issue preclusion and to avoid inconsistent results.

Response: Parties can and have asserted in AIA proceedings that a previous claim construction issued in a court decision controls. The Office has reviewed such assertions in light of the facts of each particular case, and has adopted district court constructions when appropriate. *See, e.g., Google Inc.* v. *Simpleair Inc.,* CBM2014–00054, slip op. at 7 (PTAB May 13, 2014) (Paper 19) (adopting district court's constructions, which both parties asserted should be applied in the AIA proceeding, as consistent with the broadest reasonable construction); *Kyocera Corp.* v. *Softview, LLC,* IPR2013–0004, IPR2013–00257, slip op. at 5 (PTAB March 21, 2014) (Paper 53) (same). A *per se* rule applying issue preclusion to avoid inconsistencies between two fora's claims constructions, however, is not appropriate in light of the fact specific nature of the application of issue preclusion, the differing construction approaches applied in the district court and the Office, and patent owner's opportunity to amend its challenged claims in an AIA proceeding to conform to a prior district court construction.

Comment 5: One commenter sought a rule that claim amendments will not be permitted in situations where the patent will expire during the statutory time allowed for the completion of the *inter partes* review proceeding. The commenter noted that a patent must have some enforceable life after a proceeding for an amendment to be meaningful, otherwise, the amendment is tantamount to a cancelation of the original claim. The commenter also noted that the Office can ensure that a patent will expire during the proceeding by issuing a final written decision after expiration of the patent at issue.

Response: The Office appreciates the comments and recognizes that the amendment process may not be effective if the patent is expiring or near expiration during the pendency of an AIA proceeding. The Office, however, does not believe that a rule change is necessary to address such a situation because the current rules offer the panel the ability to address such situations when they arise.

Comment 6: Commenters suggested that allowing a patent owner to forgo an opportunity to amend claims in its patent to receive a *Phillips*-type construction is unworkable and unfair to petitioner. Also, one commenter noted that to allow a patent owner to forgo amendment also raises an issue as to whether other proceedings before the Office with the same patent would also be subject to patent owner's choice to forgo the opportunity to amend. The commenter opined that a patent owner may forgo amendment and ensure a *Phillips*-type construction by terminally disclaiming the term of its patent before an AIA proceeding is filed. The commenter noted that generally a patent owner has asserted its patent before an AIA proceeding is filed, and thus has the opportunity to file a terminal disclaimer before a petition is filed.

Response: The Office agrees that allowing a patent owner to disclaim the term of its patent during an AIA proceeding to ensure a *Phillips*-type construction may be unworkable. Providing a petitioner with a full and fair opportunity to address claim construction under the appropriate approach would be difficult if a patent owner were able to disclaim patent term late in a proceeding. Also, whether a patent owner chooses to file a terminal disclaimer or simply forgoes the opportunity to file a motion to amend, the opportunity to amend was available to the patent owner, but the patent owner chose not to avail itself of the opportunity. It is this opportunity to amend claims to clarify their scope and to notify the public of what is encompassed by a claim that forms, at least in part, the Office's application of the broadest reasonable interpretation standard.

Comment 7: Commenters suggested that the Office must consider prosecution history in claim construction.

Response: The Office appreciates the comment and agrees that relevant prosecution history should be considered when specifically cited, explained, and relied upon by the parties. *See Microsoft Corp.* v. *Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015).

Patent Owner's Motions To Amend

In the Notice of Proposed Rulemaking, the Office noted that AIA proceedings are neither *ex parte* patent prosecution of a patent application nor patent reexamination or reissue. The Board does not conduct a prior art search to evaluate the patentability of the proposed substitute claims, and any such requirement would be impractical given the statutory structure of AIA proceedings. If a motion to amend is granted, the substitute claims become part of an issued patent, without any further examination by the Office. Because of this constraint, the Office has set forth rules for motions to amend that account for the absence of an independent examination by the Office where a prior art search is performed as would be done during prosecution of a patent application, reexamination, or reissue.

The Office stated in *Idle Free Systems, Inc.* v. *Bergstrom, Inc.,* Case IPR2012–00027 (PTAB June 11, 2013) (Paper 26) (informative), that in a motion to amend, "[t]he burden is not on the petitioner to show unpatentability, but on the patent owner to show patentable distinction over the *prior art of record* and also *prior art known to the patent owner.*" *Id.* at 7 (emphasis added). The Office subsequently clarified this statement, and specifically, addressed the meaning of the terms "prior art of record" and "prior art known to the patent owner," and how the burden of production shifts to the petitioner once the patent owner has made its *prima facie* case for patentability of the amendment. *See MasterImage 3D, Inc.* v. *RealD Inc.,* Case IPR2015–00040, slip op. at 1–3 (PTAB July 15, 2015) (Paper 42). This decision clarifies that a patent owner must argue for the patentability of the proposed substitute claims over the prior art of record, which includes the following: (a.) Any material art in the prosecution history of the patent; (b.) any material art of record in the current proceeding, including art asserted in grounds on which the Board did not institute review; and (c.) any material art of record in any other proceeding before the Office involving the patent. *Id.* at 2. The Patent Owner must also distinguish over any art provided in light of a patent owner's duty of candor, and any other prior art or arguments supplied by the petitioner, in conjunction with the requirement that the proposed substitute claims be narrower than the claims that are being replaced. *Id.* at 3.

In addition, the Office stated in the Notice of Proposed Rulemaking that the decision in *MasterImage* clarified how the burden of production shifts between the parties with regard to a motion to amend. "With respect to a motion to amend, once Patent Owner has set forth a *prima facie* case of patentability of narrower substitute claims over the prior art of record, the burden of production shifts to Petitioner. In its opposition, Petitioner may explain why Patent Owner did not make out a *prima facie* case of patentability, or attempt to rebut that *prima facie* case, by addressing Patent Owner's evidence and arguments and/or by identifying and applying additional prior art against proposed substitute claims. Patent Owner has an opportunity to respond in its reply. The ultimate burden of persuasion remains with Patent Owner, the movant, to demonstrate the patentability of the amended claims." *MasterImage,* slip op. at 3 (citing *Microsoft Corp.* v. *Proxyconn, Inc.,* 789 F.3d 1292, 1307 (Fed. Cir. 2015)). The Office also stated in the Notice of Proposed Rulemaking that it currently does not contemplate a change in rules or practice to shift the ultimate burden of persuasion on patentability of proposed substitute claims from the patent owner to the petitioner. Depending on the amendment, a petitioner may not have an interest in challenging patentability of any substitute claims. Therefore, to ensure patent quality and to protect the public interest, the ultimate burden of persuasion on patent owner's motion to amend remains best situated with the patent owner, to ensure that there is a clear demonstration on the record that the proposed substitute claims are patentable, given that there is no opportunity for separate examination of these newly proposed substitute claims in these adjudicatory-style AIA proceedings. *See Microsoft,* 789 F.3d at 1307 (stating ultimate burden of persuasion remains with the patent owner, the movant, to demonstrate the patentability of the substitute claims).

The Office received a spectrum of comments that ranged from approval of the Office's current motion to amend practice to those seeking significant changes to that practice. The Office addresses these additional comments below.

Comment 1: Commenters stated that patent owners should have the burden to establish a *prima facie* case of patentability of narrower substitute claims only over the prior art involved in grounds upon which the trial was instituted or at least the prior art of record in the AIA proceeding. Such a proposal, one commenter asserted, promotes efficiency by not requiring consideration of prior art that a petitioner has not asserted establishes unpatentability, and does not change the ultimate burden of persuasion from the patent owner. Another commenter stated that placing a burden on the patent owner to establish patentability over prior art not of record in the AIA proceeding inappropriately extends the burden imposed by 37 CFR 42.20(c), contrary to statements made in *Microsoft* v. *Proxyconn.* Another commenter suggested that the Office cannot require by decision any showing beyond what is required by 37 CFR 42.121.

Response: Although the Office appreciates that other procedures would streamline presenting a motion to amend, the Office remains concerned that if such a motion to amend were granted, the substitute claims become part of an issued patent without any further examination by the Office. To account appropriately for this lack of independent examination of substitute claims, the Office has required the patent owner to show in its motion to amend patentability over: (a.) Any material art in the prosecution history of the patent; (b.) any material art of record in the current proceeding, including art asserted in grounds on which the Board did not institute review; and (c.) any material art of record in any other proceeding before the Office involving the patent, in addition to showing patentability over prior art of record in the proceeding. The Office agrees with one commenter that such a requirement does not place an onerous or undue burden on patent owner. Also, such a requirement is not inconsistent with 37 CFR 42.20(c) or *Microsoft* v. *Proxyconn.* In a motion to amend, the patent owner is asking the Office to enter new claims in an issued patent that were not examined. The patent owner as the movant has the burden to show patentability. *See Microsoft,* 789 F.3d at 1307 ("The Board has reasonably interpreted these provisions [35 U.S.C. 318(b) and 37 CFR 42.20(c)] as requiring the patentee to show that its substitute claims are patentable over the prior art of record, at least in circumstances in this case."). The Federal Circuit also confirmed in *Microsoft* that the Office appropriately relies on prior art to determine patentability of substitute claims when the patent owner is given adequate notice and opportunity to present arguments distinguishing that reference. *Microsoft,* 789 F.2d at 1307–08; *see Nike, Inc.* v. *Adidas AG,* No. 2014–1719, 2016 WL 537609, at *3–5 (Fed. Cir. 2016); *Prolitec, Inc.* v. *Scentair Techs., Inc.,* 807 F.3d 1353, 1363–64 (Fed. Cir. 2015). The Federal Circuit also confirmed that 37 CFR 42.121 does not provide an exhaustive list of grounds upon which the Office can deny a motion to amend, *id.* at 1306, and choosing adjudication over rulemaking for motions to amend is not abusing the PTO's discretion. *Id.* at 1307.

Comment 2: Several commenters expressed concern about the consistency in application of decisions that are not deemed precedential, suggesting a standing order specifying which informative decisions govern a motion to amend may ensure such consistency.

Response: The Office appreciates the comments and will consider further how best to ensure uniformity in the application of requirements for motions to amend. Currently, the rules require that a party must confer with the panel before filing a motion to amend, during which the panel provides guidance for such a motion. 37 CFR 42.121(a) and 42.221(a). The Office will further consider ways to promote uniformity in the requirements for a motion to amend, such as by designating opinions precedential, issuing a standing order setting forth what requirements govern a proceeding for motions to amend, or other means.

Comment 3: Commenters suggested that the Office provide more guidance on the requirements that a patent owner must meet to establish patentability of substitute claims in a motion to amend such as the method and scope of a prior art search, whether a patent owner should specify the most relevant prior art in an affidavit, or what constitutes an acceptable definition of a key term in a motion to amend.

Response: The Office will endeavor to provide guidance through its adjudicatory process including evaluating whether decisions providing guidance should be made precedential.

Comment 4: A few commenters suggested using examiners to ensure patentability of proposed substitute claims in a motion to amend.

Response: As the Office stated in the Notice of Proposed Rulemaking, it does not contemplate seeking assistance from the Examining Corps for review of motions to amend, but will continue to evaluate the best way to improve the practice.

Patent Owner's Preliminary Response

In the Notice of Proposed Rulemaking, the Office proposed amending the rules to allow the patent owner to file new testimonial evidence without any limit on scope with its preliminary response. Because the time frame for the preliminary phase of an AIA proceeding does not allow generally for cross-examination of a declarant before institution as of right, nor for the petitioner to file a reply brief as of right, the Office is amending the rules to provide that any factual dispute created by testimonial evidence that is material to the institution decision will be resolved in favor of the petitioner solely for purposes of determining whether to institute a trial. This presumption was proposed, among other reasons, to preserve petitioner's right to challenge statements made by the patent owner's declarant, which may be done as of right during a trial.

Commenters who favored allowing patent owner to present new testimonial evidence at the pre-institution stage expressed two areas of concern with the proposed changes to allow new testimonial evidence to be submitted with patent owner's preliminary response: (1) The presumption in favor of petitioner for resolving factual disputes; and (2) the availability of a reply. The Office addresses these comments below in the responses to Comment 4 and Comment 5.

Comment 1: Many commenters support allowing patent owner to submit new testimonial evidence at the pre-institution stage, asserting that it presents a better balance of the opportunity to present evidence for both sides, thus leveling the playing field and encouraging full disclosure of rebuttal evidence by patent owner, and provides the Office with the best available information to decide whether to institute a trial. Others posited that allowing patent owner to submit new testimonial evidence in the patent owner preliminary response may also lead to settlement or other early disposition of the proceeding resulting in reduced expense and judicial economy. One commenter noted that capping the number of declarations that a patent owner may submit with its preliminary response may prevent presentation of too many factual disputes that cannot be resolved prior to institution. Another commenter sought assurance that the Office will not draw a negative inference from a decision to forgo submitting new testimonial evidence.

Response: The Office appreciates these comments and amends the rule to allow a patent owner to submit new testimonial evidence with its preliminary response, with the caveat that, if a genuine issue of material fact is created by testimonial evidence, the issue will be resolved in favor of petitioner solely for institution purposes so that petitioner will have an opportunity to cross-examine the declarant during the trial. The Office does not believe that any express restriction on the number of declarations that a patent owner may submit with its preliminary response is necessary at this time. Also, just as the Office places no negative inference on patent owner's choice to forgo an opportunity to file a preliminary response, no negative inference will be drawn if a patent owner decides not to present new testimonial evidence with a preliminary response.

Comment 2: Some commenters disagreed with the proposal to allow patent owners to submit new testimonial evidence with a preliminary response because such a rule may cause petitions to be denied without petitioner having the opportunity to cross examine a declarant or to reply to the new evidence. These commenters asserted that because a decision on institution is not appealable, a denial based on new testimonial evidence, without the safeguards of the procedures at trial that provide an opportunity for cross-examination of declarants and for a petitioner reply, is problematic. Also, these commenters noted that to apply such procedures prior to institution to alleviate these concerns also is problematic because it creates a trial-before-a-trial scenario when the institution decision should remain focused on the sufficiency of the petition. These commenters suggest that patent owner, on the other hand, would not be prejudiced by having to wait until filing its response to submit new testimonial evidence because there is an opportunity to fully develop the record post-institution, making the current rules fair to all parties. Several commenters expressed concern that allowing patent owner to present new testimonial evidence prior to institution of a trial will increase its costs with no substantive gain. Patent owners now may point out deficiencies in the petition, but permitting new testimonial evidence will only create factual disputes for which the Office would apply the presumption in favor of petitioner and institute.

Response: The Office understands the concern that a petition should not be denied based on testimony that supports a finding of fact in favor of the patent owner when the petitioner has not had an opportunity to cross-examine the declarant. For that reason, the Office will resolve a genuine issue of fact created by patent owner's testimonial evidence in favor of the petitioner solely for purposes of institution. In appropriate circumstances, a panel, in its discretion, may order some limited discovery, including cross-examination of witnesses, before institution. It is premature to assess the effect of allowing patent owner to present new testimonial evidence at the preliminary stage, but as it is not mandatory to submit such evidence, the patent owner will have to assess the value of submitting such evidence based on the particular case. The Office does not agree that patent owner's submission of new testimonial evidence necessarily creates a factual dispute that may not be resolved pre-institution. As the Federal Circuit has recognized, "[t]he mere existence in the record of dueling expert testimony does not necessarily raise a genuine issue of material fact." *Mortgage Grader, Inc.* v. *First Choice Loan Servs.*, No. 2015–1415, 2016 WL 362415, at * 8 (Fed. Cir. Jan. 20, 2016) (citing *KTEC, Inc.* v. *Vita-Mix Corp.*, 696 F.3d 1364, 1374–76 (Fed. Cir. 2012) (affirming grant of summary judgment that design patent was not analogous art, despite contrary opinion in expert report); *Minkin* v. *Gibbons, P.C.*, 680 F.3d 1341, 1351–52 (Fed. Cir. 2012) (indicating that summary judgment of invalidity may be available notwithstanding expert report supporting validity)).

Comment 3: One commenter questioned the weight to be given to new testimonial evidence presented with the preliminary response when reaching the final written decision. The commenter also asked how the scope of discovery post-institution would be modified where testimonial evidence was presented pre-institution.

Response: The Office will resolve these issues on a case-by-case basis. In general, a party has the opportunity to cross-examine affidavit testimony submitted by another party unless the Board orders otherwise. 37 CFR 42.51(b)(1)(ii). If expert testimony presented by the patent owner at the preliminary stage is relied on at the trial stage, the rule would apply unless the panel decides otherwise. For example, if the testimony is withdrawn at the trial stage, the Board would have to consider whether cross-examination falls within the scope of additional discovery. *See* 35 U.S.C. 316(a)(5), 326(a)(5); 37 CFR 42.51(b)(2).

Comment 4: Commenters favor the presumption for petitioner for factual disputes created by new testimonial evidence submitted by patent owner with its preliminary response as a mere factual contradiction from the patent owner should not prevent institution without cross-examination. One commenter wanted immediate cross-examination of patent owner's new testimonial evidence to test its veracity. Other commenters suggested that a presumption in favor of petitioner for any factual issue is counter to the statute and unfair to patent owners, and may discourage presentation of new testimonial evidence, because petitioner bears the burden at all stages of an AIA proceeding and the presumption is contrary to the presumption of validity. One commenter suggested that the presumption should weigh in favor of patent owner. Weighing evidence in favor of petitioner is inconsistent with petitioner's burden, these commenters asserted, and the inability to cross-examine witnesses is the same for all parties at the pre-institution stage, negating a need for this presumption because the parties are on equal footing. One commenter suggested that the availability of a pre-institution reply by petitioner negates any need for this presumption. Another commenter, however, stated that the presumption is appropriate in view of the statutory scheme where a preliminary response exists to point out the failure of a petition to meet any requirement for institution. Also, commenters asserted that the presumption as drafted in the Notice of Proposed Rulemaking is overly broad and 37 CFR 42.108(c) and 42.208(c) should be amended to limit expressly the application of any presumptions in favor of the petitioner to only disputed issues of material fact where the dispute is created by the introduction of the patent owner's unchallenged testimonial evidence.

Response: In light of the comments, the Office clarifies in this final rule that the presumption applies only when a genuine issue of material fact is created by patent owner's testimonial evidence. As previously stated, the Office also agrees that not every factual contradiction rises to the level of a genuine issue of material fact that would preclude a decision on the factual issue at the preliminary stage of a proceeding to assess whether petitioner has met the threshold burden for institution of a trial. The Office declines to adopt a presumption in favor of the patent owner for disputed facts at the institution stage, as the patent owner will have another opportunity to submit evidence during the trial. Additionally, because a denial of institution is a final, non-appealable decision, deciding disputed factual issues in favor of the patent owner when a petitioner has not had the opportunity to cross-examine patent owner's declarant is inappropriate and contrary to the statutory framework for AIA review. *See, e.g.*, 35 U.S.C. 316(a)(5), 326(a)(5). That both parties are in the same position at the preliminary stage, where generally there is no time for cross-examination of witnesses, does not support the view that no presumption should exist for either party because it is only through the trial process that each party is afforded a full and fair opportunity to cross-examine declarants. A presumption in favor of petitioner for disputed facts, which may be fully vetted during a trial when cross-examination of declarants is available, is appropriate given the effect of denial of a petition.

Comment 5: Several commenters asserted that petitioner should have a reply as of right when patent owner submits new testimonial evidence with its preliminary response, and one commenter advocated a reply of right for petitioner at the pre-institution stage regardless of whether patent owner submits new testimonial evidence and asserted such a reply is critical to ensure that the Office decides institution based on consideration of the full merits of each party's arguments. These commenters suggested that the lack of a reply as of right may be appropriate if the Office is prepared to liberally grant petitioners a reply to address patent owner arguments that petitioner could not have anticipated. These commenters requested that the Office clarify under what circumstances a reply would be warranted. For instance, in addition to allowing petitioner to respond to arguments that it could not have anticipated, several commenters asserted that a right to reply should be granted when any threshold issues are addressed by the new testimonial evidence such as CBM-eligibility, proper identification of real parties-in-interest, and statutory bar issues under 35 U.S.C. 315(b). Another commenter sought clarification as to the standard to be applied for granting a reply, such as interest of justice or good cause. One commenter asserted that a petitioner's reply is unnecessary at the preliminary stage because it can anticipate the patent owner's response to arguments from patent owner's positions taken in parallel litigation. One commenter wanted more guidance on the timing and content of a reply, such as limiting it to a response to the new testimonial evidence, and whether allowing a reply would affect the timing of institution or the final decision.

Response: The Office believes that although submission of patent owner testimonial evidence at the preliminary stage may warrant granting petitioner a reply to such evidence, the decision concerning whether petitioner will be afforded a reply and the appropriate scope of such a reply rests best with the panel deciding the proceeding to take into account the specific facts of the particular case.

Additional Discovery

In the Notice of Proposed Rulemaking, the Office stated that it will continue to apply several factors on a case-by-case basis when considering whether additional discovery in an *inter partes* review is necessary in the interest of justice, as follows:

1. More Than A Possibility And Mere Allegation. The mere possibility of finding something useful, and mere allegation that something useful will be found, are insufficient. Thus, the party requesting discovery already should be in possession of a threshold amount of evidence or reasoning tending to show beyond speculation that something useful will be uncovered. "Useful" does not mean merely "relevant" or "admissible," but rather means favorable in substantive value to a contention of the party moving for discovery.

2. Litigation Positions And Underlying Basis. Asking for the other party's litigation positions and the underlying basis for those positions is not necessarily in the interest of justice.

3. Ability To Generate Equivalent Information By Other Means. Discovery of information a party reasonably can figure out, generate, obtain, or assemble without a discovery request would not be in the interest of justice.

4. Easily Understandable Instructions. The requests themselves should be easily understandable. For example, ten pages of complex instructions are prima facie unclear.

5. Requests Not Overly Burdensome To Answer. The Board considers financial burden, burden on human resources, and burden on meeting the time schedule of the review. Requests should be sensible and responsibly tailored according to a genuine need.

Garmin Int'l, Inc. v. *Cuozzo Speed Techs. LLC,* Case IPR2012–00001, slip op. at 6–7 (PTAB Mar. 5, 2013) (Paper 26) (informative). The Office also applies similar factors in post-grant reviews and covered business method patent reviews when deciding whether the requested additional discovery is supported by a good cause showing and "limited to evidence directly related to factual assertions advanced" by a party. *See* 37 CFR 42.224; *Bloomberg Inc.* v. *Markets-Alert Pty Ltd,* Case CBM2013–00005, slip op. at 3–5 (PTAB May 29, 2013) (Paper 32). The Office also noted that as discovery disputes are highly fact dependent, the Office decides each issue on a case-by-case basis, taking account of the specific facts of the proceeding. *See, e.g., Bloomberg,* Case CBM2013–00005, slip op. at 6–7 (granting a specific and narrowly tailored request seeking information considered by an expert witness in connection with the preparation of his declaration filed in the proceeding). Also, parties are encouraged to raise discovery issues, and confer with each other regarding such issues, as soon as they arise in a proceeding.

In the Notice of Proposed Rulemaking, the Office also noted that it has provided guidance on its Web site, *see, e.g., http://www.uspto.gov/blog/aia/entry/message_from_administrative_patent_judges,* in response to comments generated from these questions, and will revise the Office Patent Trial Practice Guide to reflect this guidance.

Comment 1: Several commenters expressed agreement with the application of the *Garmin* factors on a case-by-case basis. Commenters noted that application of the *Garmin* factors in deciding whether to grant additional discovery helps control costs, allows completion of a trial within the one-year time period avoiding a trial within a trial, and avoids discovery pitfalls found in district court litigation. Other commenters applauded the requirement of highly targeted and limited discovery requests to ensure that discovery is not overly burdensome. For instance, requiring a showing of nexus between the alleged objective indicia of non-obviousness and the claimed invention is appropriate before granting additional discovery of a party's products.

Response: The Office agrees with these comments. Application of the *Garmin* factors provides a flexible approach to address each motion's unique set of facts, which necessitates a case-by-case approach.

Comment 2: One commenter requested that the Office relax the application of the first *Garmin* factor to require only "a reasonable basis that the non-moving party has evidence relevant to an issue" when juxtaposed with the fifth factor considering the burdensome nature of the requests.

Response: The Office appreciates the comment, but does not believe that it is necessary to relax the application of the first *Garmin* factor as the Office resolves the factors on a case-by-case basis.

Comment 3: One commenter urged consistency in the application of the *Garmin* factors in determining whether to grant additional discovery and asks for precedential decisions for guidance.

Response: The Office agrees that panels should strive for consistency when addressing motions for additional discovery that present similar facts. The Office also does review opinions in an effort to identify ones that should be designated as precedential, and notes that the public may also ask the Office to consider designating a particular opinion as precedential. Resolving discovery issues, however, is so highly dependent on the facts of the particular case that precedents often are not helpful.

Comment 4: One commenter asked that if a discovery request addresses a standing issue, it should be liberally granted.

Response: The nature of the issue to be resolved in discovery disputes is taken into account when assessing the *Garmin* factors. The *Garmin* factors are appropriate and adequate to resolve whether discovery should be granted for information relating to standing issues in addition to any other issue for which a party seeks discovery.

Comment 5: A commenter urged the Office to add the following additional factors to the *Garmin* factors for consideration by a panel: (1) Whether the information is solely within the possession of the other party; (2) whether the information already has been produced in a related matter; and (3) whether the discovery sought relates to jurisdictional issues under 35 U.S.C. 315 and 325.

Response: Garmin sets forth a flexible and representative framework for providing helpful guidance to the parties, and assisting the Office to decide whether additional discovery requested in an *inter partes* review is necessary in the interest of justice, consistent with 35 U.S.C. 316(a)(5), or whether additional discovery in a post-grant review is supported by a good cause showing, consistent with 35 U.S.C. 326(a)(5). The list of factors set forth in *Garmin* is not exhaustive. The Office applies the factors on a case-by-case basis, considering the particular facts of each discovery request, including the particular arguments raised by a party seeking additional discovery. Under this flexible approach, parties are permitted to present their arguments using different factors including those suggested in the comments. In fact, the suggested additional factors are subsumed effectively already under the *Garmin* factors, and have been considered by the Office in deciding whether to grant additional discovery requests. *See, e.g., Int'l Sec. Exch., LLC* v. *Chi. Bd. Options Exch., Inc.,* Case IPR2014–00097 (PTAB July 14, 2014) (Paper 20) (granting a specific, narrowly tailored, and reasonable request for additional discovery of information that Patent Owner could not have obtained reasonably without a discovery request).

Comment 6: Several comments indicated that, although the *Garmin* factors are appropriate, they sometimes are being applied incorrectly to require the moving party to have the actual evidence being sought.

Response: As explained in *Garmin,* the moving party, who is seeking additional discovery, should present a threshold amount of evidence or reasoning tending to show beyond speculation that something useful will be uncovered. *Garmin,* Case IPR2012–00001, slip op. at 7–8. This factor ensures that the opposing party is not overly burdened, and the proceeding not unnecessarily delayed, by speculative requests where discovery is not warranted. The Office, however, does not require the moving party to have any actual evidence of the type being sought.

Additional Discovery on Evidence Relating to Obviousness

In the Notice of Proposed Rulemaking, the Office stated that the *Garmin* factors currently provide appropriate and sufficient guidance for how to handle requests for additional discovery, such as for evidence of commercial success for a product of the petitioner, which the Office will continue to decide on a case-by-case basis. In the Notice of Proposed Rulemaking, the Office also encouraged parties to confer and reach an agreement on the information to exchange early in the proceeding, resolving discovery issues promptly and efficiently. *See* 37 CFR 42.51(a). The Office, however, will continue to seek feedback as the case law develops as to whether a more specific rule for this type of discovery is warranted or needed. In the Notice of Proposed Rulemaking, the Office also stated that the *Garmin* factors provide helpful guidance to the parties and assist the Office to achieve the appropriate balance, permitting meaningful discovery, while securing the just, speedy, and inexpensive resolution of every proceeding. The Office also plans to add further discussion as to how the *Garmin* factors have been applied in the Office Patent Trial Practice Guide.

In the Notice of Proposed Rulemaking, the Office recognized that it is important to provide a patent owner a full and fair opportunity to develop arguments regarding secondary considerations. Evidence of many secondary considerations (*e.g.,* long-felt need, industry praise, commercial success of patent owner's patented product, widespread licensing) is available to patent owners without discovery. When patent owners seek additional discovery on such issues, however, the Office agreed that a conclusive showing of nexus between the claimed invention and the information being sought through discovery is not required at the time the patent owner requests the additional discovery. Nonetheless, some showing of nexus is required to ensure that additional discovery is necessary in the interest of justice, in an *inter partes* review, or is supported by a good cause showing, in a post-grant review. *See* 35 U.S.C. 316(a)(5) and 326(a)(5); 37 CFR 42.51(b)(2) and 42.224. Notably, as explained in *Garmin* concerning Factor 1, the mere possibility of finding something useful, and mere allegation that something useful will be found, are insufficient to demonstrate that the requested discovery is necessary in the interest of justice. *Garmin,* slip op. at 6. A patent owner seeking secondary consideration evidence from a petitioner should present a threshold amount of evidence *or reasoning* tending to show beyond speculation that something useful will be uncovered. A mere infringement contention or allegation that the claims reasonably could be read to cover the petitioner's product is generally insufficient, because such a contention or allegation, for example, does not show necessarily that the alleged commercial success derives from the claimed feature. Nor does it account for other desirable features of the petitioner's product or market position that could have contributed to the alleged commercial success. *See e.g., In re DBC,* 545 F.3d 1373, 1384 (Fed. Cir. 2008) (finding no nexus absent evidence that "the driving force behind [the allegedly successful product's sales] was the claimed combination"); *John's Lone Star Distrib., Inc.* v. *Thermolife Int'l, LLC,* IPR2014–01201 (PTAB May 13, 2015) (Paper 30). The Office plans to add further discussion on this issue to the Office Patent Trial Practice Guide.

Comment 1: Although commenters agreed with the use of the *Garmin* factors as providing appropriate and sufficient guidance for deciding motions for additional discovery, and agreed with a case-by-case approach, one commenter questioned the case-by-case approach and stated that proof of a nexus between secondary consideration evidence and the claimed invention before authorizing discovery places too high a burden on the patent owner. Another commenter stated that a strong nexus showing should be required and infringement contentions do not by themselves show such nexus.

Response: The scope of discovery in AIA proceedings differs significantly from the scope of discovery available under the Federal Rules of Civil Procedure in district court proceedings. Because Congress intended AIA proceedings to be a quick and cost-effective alternative to litigation, the statute provides only limited discovery in trial proceedings before the Office. *See* 35 U.S.C. 316(a)(5) and 326(a)(5); 37 CFR 42.51(b)(2) and 42.224. Some showing of nexus is required to ensure that the additional discovery is necessary in the interest of justice, in an *inter partes* review, or is supported by a good cause showing, in a post-grant review

Real Party-in-Interest

The Office noted in the Notice of Proposed Rulemaking that it is important to resolve real party-in-interest and privity issues as early as possible, preferably in the preliminary stage of the proceeding prior to institution, to avoid unnecessary delays and to minimize cost and burden on the parties and the resources of the Office. In most cases, the patent owner also recognizes the benefit of raising a real party-in-interest or privity challenge early in the proceeding, before or with the filing of its preliminary response, to avoid the cost and burden of a trial if the challenge is successful.

The Office also noted that to balance efficiency with fairness, the Office, in general, will permit a patent owner to raise a challenge regarding a real party-in-interest or privity at any time during a trial proceeding. Such a position is consistent with the final rule notice. *See* Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents; Final Rule, 77 FR 48680, 48695 (Aug. 14, 2012) ("After institution, standing issues may still be raised during trial. A patent owner may seek authority from the Board to take pertinent discovery or to file a motion to challenge the petitioner's standing."). With respect to a late challenge that reasonably could have been raised earlier in the proceeding, the Office will consider the impact of such a delay on a case-by-case basis, including whether the delay is unwarranted or prejudicial. The Office also will consider that impact when deciding whether to grant a motion for additional discovery based on a real party-in-interest or privity issue. The Office plans to add further discussion on this issue to the Office Patent Trial Practice Guide.

Comment 1: Most commenters agreed that a real party-in-interest issue can be raised at any time in the proceeding provided that it is raised as soon as possible, preferably by the time that the preliminary response is filed, so that it may be decided at the institution stage, and patent owner has not delayed in raising the issue. Commenters also encouraged the Office to grant liberally requests for additional discovery to resolve real party-in-interest disputes early in a proceeding. Other commenters sought more clarity and certainty when a late challenge to a real party-in-interest designation would be permitted, such as whether patent owner should show that the issue could not have been raised earlier, whether patent owner has good cause to raise it late, or whether addressing a real party-in-interest challenge is in the interests of justice.

Response: The Office agrees that resolving any real party-in-interest issues early in the case is preferred to provide finality on the issue and settled expectations to the parties. The Office believes, however, that especially when a challenge to a real party-in-interest designation is made later in the case, the panel is in the best position to review all the circumstances surrounding any failure to name appropriately all real parties-in-interest and to resolve this issue. Certainly, the factors mentioned by the commenter, such as whether patent owner can show that the issue could not have been raised earlier, whether patent owner has good cause to raise it later in the proceeding, or whether addressing a real party-in-interest challenge is in the interests of justice, are considerations for the panel in making a determination as to whether patent owner should be allowed additional discovery on the issue. The Office does not believe that special discovery rules or procedures are necessitated by challenges to real party-in-interest.

Comment 2: Commenters assert that a petitioner should be allowed to amend its real party-in-interest designation without losing the filing date of the petition when in the interests of justice and in the absence of fraud.

Response: The Office appreciates the comment and is evaluating alternative approaches to permit parties to amend their real party-in-interest designations.

Multiple Proceedings

The Office asked a series of questions relating to how multiple proceedings, such as an AIA trial, reexamination, or reissue proceeding, before the Office involving the same patent should be coordinated, including whether one proceeding should be stayed, transferred, consolidated, or terminated in favor of another. In response to comments answering these questions, the Office noted in the Notice of Proposed Rulemaking that the current rules provide sufficient flexibility to address the unique factual scenarios presented to handle efficiently and fairly related proceedings before the Office on a case-by-case basis, and that the Office will continue to take into account the interests of justice and fairness to both petitioners and patent owners where multiple proceedings involving the same patent claims are before the Office. Although the Office proposed no new rule involving multiple proceedings, it indicated plans to add further discussion on what factors the Office considers when determining whether to stay, transfer, consolidate, or terminate a proceeding in the Office Patent Trial Practice Guide.

Comment 1: Commenters agreed that AIA trials on the same patent should be consolidated before the same panel, but asserted that the current rules insufficiently protect patent owners from potential harassment through the filing of multiple AIA proceedings. One commenter suggested that sanctions should be imposed against petitioners who file serial petitions to harass patent owners. Other commenters, however, offered that there are many appropriate reasons for a petitioner to file more than one petition, such as a material change in the law, to address additional claims, or to address information raised by a patent owner that could not have been reasonably anticipated. Another commenter suggested that multiple AIA proceedings should be instituted against the same patent if brought by different petitioners that are not real parties-in-interest or in privity with each other.

Response: The Office disagrees that insufficient protection exists for patent owners to guard against potential harassment through the filing of multiple petitions. The AIA statutory scheme itself provides such protection. *See* 35 U.S.C. 325(d). Office decisions offering guidance on the application of section 325(d) include the following: *SAS Institute, Inc.* v. *Complementsoft, LLC,* IPR2013–00581 (PTAB Dec. 30, 2013) (Paper No. 15) (denying a petition as to grounds based upon substantially the same prior art and arguments as set forth in a prior IPR petition); *Oracle Corporation* v. *Clouding IP, LLC,* IPR2013–00100 (PTAB May 16, 2013) (Paper No. 8) (granting a petition where new arguments and supporting evidence were presented that shed a different light on references previously considered during prosecution); *Medtronic, Inc* v. *Nuvasive, Inc.,* Case IPR2014–00487 (PTAB Sept. 11, 2014) (Paper 8); *Unified Patents, Inc.* v. *PersonalWeb Techs., LLC,* Case IPR2014–00702 (PTAB July 24, 2014) (Paper 13); *Prism Pharma Co., Ltd.* v. *Choongwae Pharma Corp.,* Case IPR2014–00315 (PTAB July 8, 2014) (Paper 14); *Unilever, Inc.* v. *Procter & Gamble Co.,* Case IPR2014–00506 (PTAB July 7, 2014) (Paper 17); *Medtronic, Inc.* v. *Robert Bosch Healthcare Systems, Inc.,* Case IPR2014–00436 (PTAB May 19, 2014) (Paper 17); *Intelligent Bio-Systems, Inc.* v. *Illumina Cambridge Limited,* Case IPR2013–00324 (PTAB Nov. 21, 2013) (Paper 19); *ZTE Corp.* v. *ContentGuard Holdings, Inc.,* Case IPR2013–00454 (PTAB Sept. 25, 2013) (Paper 12).

Comment 2: A commenter asserted that different proceedings involving the same patent have had inconsistent outcomes and suggested that the Office adopt a practice or rule to ensure consistency such as requiring a second panel to address an earlier panel's position to explain why it is adopting an inconsistent opinion or seeking review of a second, inconsistent opinion by the Chief Administrative Patent Judge or other Office official.

Response: The Office agrees that consistency among opinions involving the same patent and/or claims is important and strives for such consistency. The Office has procedures for assigning generally the same panel to cases involving the same patent, or to at least have one panel member in common for cases involving the same patent, to ensure consistency. The Office also currently has procedures involving administrative patent judges that are not assigned to a panel to review decisions before they are issued to provide another avenue to ensure consistency by flagging inconsistencies with other opinions for the panel. A party has the opportunity to point out other decisions concerning the same patent and/or claims to a panel and has the opportunity to ask for rehearing if the party believes that a decision is inconsistent with a previous decision. The Office does not believe that additional procedures or rules need to be promulgated at this time.

Comment 3: One commenter asserted that prejudice to the parties and the ability to complete proceedings within the one-year statutory period should be overriding considerations in how to handle multiple proceedings. Other commenters asserted that the interest of a second petitioner in being adequately represented and heard and the efficiency of resolving a dispute and improving patent quality should be considered when deciding whether joinder is appropriate for two AIA proceedings.

Response: The Office strives to ensure fairness to all parties in handling multiple proceedings, in addition to considering the efficiencies for the Office in how to handle multiple proceedings.

Comment 4: One commenter requested more guidance on the proper timing and procedures for joinder of proceedings when the second petitioner files a substantially-identical petition to an earlier-filed petition. One commenter suggested that the rules be changed to require a default shorter period for a patent owner to file a preliminary response to a "me too" petition.

Response: The Office appreciates these comments, but believes that the decision concerning whether to shorten the response time for patent owner to submit a preliminary response is best left to the discretion of the panel handling the case. The Office does attempt to consolidate or join proceedings involving the same patent, especially petitions that raise virtually identical issues, to efficiently resolve AIA proceedings involving the same patent. The trial timeline does at times prevent such consolidation or joinder; the closer in time petitions on the same patent are filed, the more likely the Office can consolidate or join the proceedings.

Comment 5: One commenter suggests that the Office should consider the evidence submitted during prior prosecution, such as secondary considerations for non-obviousness, and to deny institution where the record was substantially developed.

Response: The Office does consider the record evidence from the prosecution history of the patent when presented and relied upon by the parties.

Extension of One Year Period To Issue a Final Determination

In the Notice of Proposed Rulemaking, the Office stated that it will continue to strive to meet the one-year statutory time period for trial, and that it does not propose to change the rules pertaining to the one-year pendency from institution-to-decision to provide for specific circumstances under which "good cause" may be shown. The Office proposed, however, to revise the Office Patent Trial Practice Guide to provide an exemplary list of instances in which an extension of the one-year statutory period may be warranted. Generally, commenters agree with the Office's approach to handling of the one-year period to issue a final determination. One commenter offered proposed examples of good cause for an extension, such as when one of the parties is prejudiced by circumstances that are unforeseeable and outside of its control or when the case is complex involving multiple proceedings. The Office will consider these suggestions in revising the Office Patent Trial Practice Guide to provide examples where good cause may be shown for extension of the one-year period to issue a final determination in an AIA proceeding.

Live Testimony in an Oral Hearing

In the Notice of Proposed Rulemaking, the Office noted that it will continue its present practice of considering requests for presentative of live testimony in an oral hearing on a case-by-case basis, but the Office does not expect that such live testimony will be required in every case where there is conflicting testimony. When requested by the parties, however, and where the panel believes live testimony will be helpful in making a determination, the Office will permit live testimony. The format for presenting live testimony is left to the discretion of the panel, but panels will make clear at the hearing that live testimony is evidence that becomes part of the record. The Office also noted in the Notice of Proposed Rulemaking that it will provide guidance on limiting parties to issues specified in the oral argument request in the FAQs on the PTAB Trials Web site and in the Office Patent Trial Practice Guide. The Office also proposed amending the rules to provide additional days for the parties to exchange and conference on demonstrative exhibits to resolve any disputes among themselves. Generally, commenters agree with the Office's approach to handling live testimony in oral hearings and also agree with the proposed change to the rules to allow more time for parties to resolve objections to demonstratives.

Rule 11-Type Certification

In the Notice of Proposed Rulemaking, the Office proposed to amend section 42.11, which prescribes the duty of candor owed to the Office, to include a Rule 11-type certification for papers filed with the Board with a provision for sanctions for noncompliance. The Office received several comments on the proposal and has responded to those comments below. The Office will implement a Rule-11 type certification in the final rule.

Comment 1: There were numerous comments on the proposed changes to Rule 42.11 (37 CFR 42.11). Although a number of comments supported adoption of the proposed rule, several comments stated that the proposed rule was unnecessary or redundant of existing rules and should not be adopted.

Response: The Office sees the proposed rule as preventative in nature. Although the Office does not expect, based on past experience, that the procedures in the proposed rule will be used often, the deterrent effect of having such a rule has been recognized. *See Raylon, LLC* v. *Complus Data Innovations, Inc.*, 700 F.3d 1361, 1370 (Fed. Cir. 2012). The final rule, by specifically incorporating the requirements of 37 CFR 11.18, provides greater detail on the Office's expectations for counsel and parties participating in post grant proceedings and also provides a procedure for sanctions motions that does not appear in the current rule.

Comment 2: Several comments expressed concern that the proposed rule will lead to an increase in investigations by the Office of Enrollment and Discipline (OED). One comment suggested that OED investigations could become "a matter of course" in AIA trial proceedings.

Response: The Office appreciates the concern raised by the comment. Based on experience, however, the Office does not expect this situation to occur. Requests for sanctions have so far been infrequent in AIA trial proceedings. Moreover, as specifically provided in the final rule, a sanctions motion cannot be filed without Board authorization. Also, the final rule provides a procedure that allows a party to cure an alleged violation before authorization to file a sanctions motion can be requested.

Comment 3: Several commenters observed that the proposed rule omits a provision that would allow the ability to plead or aver based on contentions or denials being likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. A similar comment was directed to denials of factual contentions. These comments noted that such provisions are present in Rule 11 of the Federal Rules of Civil Procedure.

Response: These comments are adopted. The suggested provisions have been added to the final rule by incorporating the provisions of 37 CFR 11.18(b)(2). This change, however, should not be construed as an exception to the requirement that the petition include a full statement of the reasons for the relief requested, including a detailed explanation of the significance of the evidence including material facts, and the governing law, rules, and precedent. 37 CFR 42.22.

Comment 4: Several comments suggested that requiring a party to serve written notice to the other party before moving for sanctions may not provide sufficient information to correct the allegedly sanctionable conduct.

Response: The comments are adopted. The final rule requires service of a proposed motion on the other party before seeking authorization to file a motion for sanctions. This change does not dispense with the 21-day period to correct or withdraw the challenged paper or claim, or the necessity for authorization by the Board before a sanctions motion is filed.

Comment 5: One comment expressed concern that the proposed rule is ambiguous and saw a conflict between the proposed rule and 37 CFR 42.12.

Response: The Office does not see any conflict between the proposed rule, which concerns the duty of candor and motions for sanctions, and 37 CFR 42.12. In fact, the proposed rule specifically refers to section 42.12 and requires sanctions to be consistent with that rule.

Comment 6: Some comments suggested that the final section of the proposed rule, providing exceptions for disclosures, discovery requests, responses, and objections, is inconsistent with other provisions and should be eliminated.

Response: These comments are adopted. In the final rule, paragraph (e) of the proposed rule is eliminated.

Comment 7: One comment suggested that the requirements of paragraphs (c)(2), (3), and (4) of the proposed rule be eliminated as unreasonably strict.

Response: The comment is not adopted. Similar provisions are present in 37 CFR 11.18(b)(2). The Office believes these provisions provide needed guidance as to what representations are covered by the duty of candor. The final rule, therefore, specifically incorporates Rule 11.18(b)(2).

Comment 8: One comment suggested that the sanctions provisions should not apply to law firms.

Response: The comment is adopted. The sanctions provision is modified in the final rule to eliminate sanctions on law firms. The Office believes that sanctions directed to practitioners and parties are sufficient deterrents.

Comment 9: One comment suggested that § 42.11(d)(4) of the proposed rule be revised to limit the requirement for consistency with 37 CFR 42.12 to sanctions on a party.

Response: The comment is not adopted. The Office does not see a basis for a distinguishing between parties, practitioners, and others who might be subject to sanctions.

Comment 10: One comment suggested that the Office may not be authorized by statute to sanction pre-institution actions. The same comment suggested that the Office may not be authorized to issue sanctions for behavior other than improper use of the proceeding and suggests eliminating paragraphs (c)(2), (3), and (4) from the final rule for this reason.

Response: The comments are not adopted. The proposed rule is consistent with the statute, including provisions which give the Director authority to prescribe regulations "governing" *inter partes* reviews and specifically require the Director to prescribe regulations "prescribing sanctions for abuse of discovery, abuse of process, or any other improper use of the proceeding, such as to harass and cause delay or an unnecessary increase in the cost of a proceeding." 35 U.S.C. 316(a)(4), 316(a)(6). Similar provisions apply to post grant and covered business method patent reviews. 35 U.S.C. 326(a)(4), 326(a)(6). Other pertinent statutory provisions include 35 U.S.C. 316(b) and 326(b) (Director shall consider "integrity of the patent system" in prescribing regulations.).

Improper use of the proceeding covers a broad range of prohibited activities including those in paragraphs (c)(2), (3), and (4) of the proposed rule. *See* 37 CFR 42.12. The Office, therefore, does not agree that the statute limits the Office's power to impose sanctions as set forth in the comment.

Comment 11: One comment raised due process concerns arising from the risk of inconsistent enforcement by different panels. The comment suggested that the final rule require the Board to consider the sanctions that likely would be provided by federal courts for comparable conduct.

Response: The comment is not adopted. The Office believes that the proposed rule and Rule 42.12 (37 CFR 42.12) provide adequate guidance to the Board on sanctions, thereby minimizing risk of inconsistent enforcement by different panels.

Comment 12: One comment suggested adding the following at the end of § 42.11(d)(3) of the proposed rule: "and why a specific sanction by the Board should not be imposed."

Response: The comment is adopted. The final rule includes this addition. However, the Office does not view this addition as restricting the Board's discretion to determine what sanctions might be appropriate after considering the motion.

Comment 13: One comment suggested removing the references to "claims" and "defenses" in the proposed rule because they are unclear.

Response: The comment is adopted. The final rule incorporates 37 CFR 11.18(b)(2), which omits the reference to "claims" and "defenses."

Comment 14: One comment suggested that the Office provide, in the final rule, a specific example of improper purpose in filing a petition.

Response: The comment is not adopted. Because whether particular circumstances warrant sanctions is a highly fact dependent question, the Office will follow a case-by-case approach. The Office will provide further guidance through its written decisions addressing particular factual scenarios.

Comment 15: One comment suggested adding a "meet and confer" requirement before filing a motion for sanctions.

Response: The comment is not adopted. A specific meet and confer requirement is not necessary, as the Office expects that before a motion for sanctions is filed, the party whose actions are being challenged has received a proposed motion and had 21 days to take corrective action. Before authorizing a motion for sanctions, the Board will ascertain that these procedures, necessitating communications between the parties, have been followed.

General Topics

In the Notice of Proposed Rulemaking, the Office proposed using a word count for the petition, patent owner preliminary response, patent owner response, and petitioner's reply brief. For all other briefing, the Office will maintain a page limit. The Office noted that this change will allow the Office to gain administrative efficiencies. For example, with the use of word counts for the main briefings for

AIA proceedings, petitions will no longer be reviewed to determine if any claim charts contain argument, thereby streamlining administrative review of petitions and reducing the number of non-compliant petitions that require correction. In addition to the comments concerning word count for major briefing, the Office received comments on other general topics that will be addressed below.

Comment 1: The majority of commenters favor the change to a word count for major briefing, which they agree would be more efficient and promote better advocacy. Some commenters requested that administrative items, such as mandatory notices, be excluded from the word count. Another commenter requested that the parties be able to include a one-page sheet providing definitions of technical terms that would not be included in the word count.

Response: The Office agrees in part with the comments and will exclude grounds for standing under 37 CFR 42.104, 42.204, or 42.304, and mandatory notices under 37 CFR 42.8 from the word count for major briefing. The Office does not believe that excluding a definition section from the word count is necessary.

Comment 2: Several commenters advocated improvements to the Board's Web site and docketing case system. Suggestions included improving PRPS to be able to search by patent owner, to be able to store more than ten documents without degrading responsiveness, to accurately post the status of cases, and to improve the reliability of PRPS in general.

Response: The Office has considered the commenters' suggestions and is working with vendors to develop a new electronic filing system with additional functionality such as searching in the case docketing system.

Comment 3: One commenter sought clarification on a party's ability to confer with a witness during the deposition, especially between cross-examination and re-direct, which the commenter asserted encourages rehearsal of testimony for re-direct.

Response: The Office appreciates the comment concerning when a party may confer with its witness during a deposition, but believes that the guidance in the Office Patent Trial Practice Guide strikes the correct balance concerning when a party may confer with its witness.

Comment 4: One commenter suggested that notice and comment is required for this rulemaking under the APA, and encouraged the Office to continue to subject future rule changes to the notice and comment process.

Response: The Office appreciates this comment, but disagrees that notice and comment is required for this rulemaking under the APA. This rule makes changes to the procedural requirements governing practice before the Office. Under current case law, such actions are not considered to be substantive rulemakings, and are exempt from the APA's notice and comment requirements. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice"). Nevertheless, the Office values public input in its rulemaking actions, and notes that it did provide prior notice and a comment period for this rulemaking, as well as other public outreach in connection with these rule revisions. The Office continues to value public outreach and input from the public in its rulemaking efforts.

Recognizing Privilege for Communications With Domestic Patent Agents and Foreign Patent Practitioners

In 2015, the Office launched an outreach initiative to explore various issues associated with confidential communications with patent agents or foreign patent practitioners. The Office published a notice convening a roundtable in February 2015 and requesting public comments. *See* Domestic and International Issues Related to Privileged Communications Between Patent Practitioners and Their Clients, 80 FR 3953 (Jan. 26, 2015). Nineteen parties submitted written comments in response to the **Federal Register** notice, which are available on the USPTO Web site at: *http://www.uspto.gov/learning-and-resources/ip-policy/roundtable-domestic-and-international-issues-related-privileged.* Some of these comments raised the issue of unclear or inconsistent privilege rules for agents and foreign practitioners during discovery in PTAB proceedings.

Consistent with that earlier outreach initiative, the Office sought comments in the Notice of Proposed Rulemaking on the subject of attorney-client privilege or other limitations on discovery in PTAB proceedings, including on whether rules regarding privilege should be issued in connection with PTAB proceedings. The Office noted that such rules could, for example, explicitly recognize privilege for communications between patent applicants or owners and their domestic patent agents or foreign patent practitioners, under the same circumstances as such privilege is recognized for communications between applicants or owners and U.S. attorneys. *See In re Queens University at* Kingston, No 2015–145, slip op. at 26–27 (Fed. Cir. Mar. 7, 2015) (recognizing a patent-agent privilege extending to communications with non-attorney patent agents when those agents are acting within the agent's authorized practice of law before the Patent Office). The Office invited the public to provide any comments on language, scope, or other considerations for creating such a privilege, including possible amendments to any of 37 CFR 42.51, 42.52, 42.55, 42.62, or 42.64 to accomplish this purpose.

The Office appreciates the thoughtful comments that it received in response and will address these comments in a separate notice, if any further action is taken.

Discussion of Specific Rules

Subpart A—Trial Practice and Procedure

Claim Construction Standard

The Office amends 37 CFR 42.100(b), 42.200(b), and 42.300(b) as follows:

- Amend 37 CFR 42.100(b) to add the phrase "that will not expire before a final written decision is issued" after "an unexpired patent" and add that a party may request a district court-type claim construction approach be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request must be accompanied by a party's certification, and be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.
- Amend 37 CFR 42.200(b) to add the phrase "that will not expire before a final written decision is issued" after "an unexpired patent" and add that a party may request a district court-type claim construction approach be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request must be accompanied by a party's certification, and be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.
- Amend 37 CFR 42.300(b) to add the phrase "that will not expire before a final written decision is issued" after "an unexpired patent" and add that a party may request a district court-type claim construction approach be applied if a party certifies that the involved patent will expire within 18 months

from the entry of Notice of Filing Date Accorded to Petition. The request must be accompanied by a party's certification, and be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.

Patent Owner Preliminary Response

The Office amends 37 CFR 42.23(b) by:

- Substituting "opposition, patent owner preliminary response, or patent owner response" for "opposition or patent owner response."

The Office amends 37 CFR 42.107(a) to indicate that a preliminary response filed by the patent owner is subject to the word count under § 42.24, rather than a page limit.

The Office amends 37 CFR 42.107 to delete paragraph (c).

The Office revises 37 CFR 42.108(c) to indicate that the Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence, but a genuine issue of material fact created by such testimonial evidence will be viewed in the light most favorable to the petitioner solely for purposes of deciding whether to institute an *inter partes* review. A petitioner may seek leave to file a reply to the preliminary response, but any such request must make a showing of good cause.

The Office revises 37 CFR 42.207(a) to indicate that a preliminary response filed by the patent owner is subject to the word count under § 42.24, rather than a page limit.

The Office amends 37 CFR 42.207 to delete paragraph (c).

The Office revises 37 CFR 42.208(c) to indicate that during post-grant reviews, the Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence, but a genuine issue of material fact created by such testimonial evidence will be viewed in the light most favorable to the petitioner solely for purposes of deciding whether to institute a post-grant review. A petitioner may file a reply to the preliminary response, but any such response must make a showing of good cause.

Oral Hearing

The Office amends 37 CFR 42.70(b) to require at least seven, not just five, days before oral argument for exchange of exhibits.

Word Count

The Office amends 37 CFR 42.24 to implement a word count limitation for petitions, patent owner preliminary responses, patent owner responses, and petitioner's replies, by:

- Adding "Type-volume or" to the title;
- adding "word counts or" before "page limits"; adding "word count or" before "page limit"; adding "grounds for standing under §§ 42.104, 42.204, or 42.304, mandatory notices under § 42.8," after "a table of authorities," and adding "or word count" after "a certificate of service" in paragraph (a)(1);
- substituting "14,000 words" for "60 pages" in (a)(1)(i) and (a)(1)(iv);
- substituting "18,700 words" for "80 pages" in (a)(1)(ii) and (a)(1)(iii);
- substituting "word counts" for the first three instances of "page limits" and "word count" for the two instances of "page limit" in paragraph (a)(2), and adding "word counts or" before "page limits" in the last sentence;
- adding "word counts or" before the "page limits" in paragraph (b);
- substituting "word counts" for the two instances of "page limits" in paragraph (b)(1);
- substituting "word counts" for the two instances of "page limits" in paragraph (b)(2);
- adding "word counts or" before the two instances of "page limits" and adding "or word count" after "a certificate of service" in paragraph (c);
- substituting "5,600 words" for "25 pages" in paragraph (c)(1);
- adding a new paragraph that implements a requirement for a certification, stating the number of words, for any paper whose length is specified by type-volume limits.

Rule 11-Type Certification

The Office amends 37 CFR 42.11 to add "signing papers; representations to the Board; sanctions" to the title of the section, to designate existing text as paragraph (a) and to add a subheading to that paragraph, and to add new paragraphs that implement a signature requirement, as set forth in Rule 11.18(a), for every petition, response, written motion, and other paper filed in a proceeding; provide the representations that an attorney, registered practitioner, or unrepresented party makes when presenting to the Board a petition, response, written motion, or other paper; and set forth the process and conditions under which the Board will impose sanctions if the Board determines that § 41.11(c) has been violated.

Rulemaking Considerations

A. Administrative Procedure Act (APA)

This final rule revises the consolidated set of rules relating to Office trial practice for *inter partes* review, post-grant review, the transitional program for covered business method patents, and derivation proceedings. The changes being adopted in this notice do not change the substantive criteria of patentability. These changes involve rules of agency practice. *See, e.g.,* 35 U.S.C. 316(a)(5), as amended. These rules are procedural and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive requirements for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (rules are not legislative because they do not "foreclose effective opportunity to make one's case on the merits").

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice") (quoting 5 U.S.C. 553(b)(A)); *U.S.* v. *Gould,* 568 F.3d 459, 476 (4th Cir. 2009) ("The APA also requires publication of any substantive rule at least 30 days before its effective date, 5 U.S.C. 553(d), except where the rule is interpretive * * *.").

B. Regulatory Flexibility Act

For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes adopted in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

The changes adopted in this document are to revise certain trial practice procedures before the Board. Any requirements resulting from these changes are of minimal or no additional burden to those practicing before the

Board. Specifically, changes pertaining to representations made to the Office would not present any additional burden as the duty of candor and good faith are already requirements under existing Board trial practice (37 CFR 42.11), USPTO rules of professional conduct, and, for those who are attorneys, applicable State bars. Second, changes imposed by converting certain page limits to word counts for petitions and motions are not expected to result in any material change to filings, other than the addition of a certification that the filing is compliant. Finally, the changes pertaining to the inclusion of supporting evidence in a patent owner preliminary response to petition are not required to be filed, but merely available to parties should they choose. Moreover, the Office anticipates that the vast majority of those that will provide such supporting evidence during the petition review stage would have provided such information later anyway, if and when, a trial were instituted.

For the foregoing reasons, the changes in this notice will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this final rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule is not a "major rule" as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). This rulemaking does not add any additional information requirements or fees for parties before the Board. Therefore, the Office is not resubmitting information collection packages to OMB for its review and approval because the revisions in this rulemaking do not materially change the information collections approved under OMB control number 0651–0069.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents.

For the reasons set forth in the preamble, the Office amends 37 CFR part 42 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for 37 CFR part 42 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

Subpart A—Trial Practice and Procedure

■ 2. Section 42.11 is revised to read as follows:

§ 42.11 Duty of candor; signing papers; representations to the Board; sanctions.

(a) *Duty of candor.* Parties and individuals involved in the proceeding have a duty of candor and good faith to the Office during the course of a proceeding.

(b) *Signature.* Every petition, response, written motion, and other paper filed in a proceeding must comply with the signature requirements set forth in § 11.18(a) of this chapter. The Board may expunge any unsigned submission unless the omission is promptly corrected after being called to the counsel's or party's attention.

(c) *Representations to the Board.* By presenting to the Board a petition, response, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney, registered practitioner, or unrepresented party attests to compliance with the certification requirements under § 11.18(b)(2) of this chapter.

(d) *Sanctions*—(1) *In general.* If, after notice and a reasonable opportunity to respond, the Board determines that paragraph (c) of this section has been violated, the Board may impose an appropriate sanction on any attorney, registered practitioner, or party that violated the rule or is responsible for the violation.

(2) *Motion for sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates paragraph (c) of this section. The motion must be authorized by the Board under § 42.20 prior to filing the motion. At least 21 days prior to seeking authorization to file a motion for sanctions, the moving party must serve the other party with the proposed motion. A motion for sanctions must not be filed or be presented to the Board if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service of such motion or within another time the Board sets. If warranted, the Board may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Board's initiative.* On its own, the Board may order an attorney, registered practitioner, or party to show cause why conduct specifically described in the order has not violated paragraph (c) of this section and why a specific sanction authorized by the Board should not be imposed.

(4) *Nature of a sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated and should be consistent with § 42.12.

(5) *Requirements for an order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

■ 3. Section 42.23 is amended by revising paragraph (b) to read as follows:

§ 42.23 Oppositions and replies.

* * * * *

(b) All arguments for the relief requested in a motion must be made in the motion. A reply may only respond to arguments raised in the corresponding opposition, patent owner preliminary response, or patent owner response.

■ 4. Section 42.24 is revised to read as follows:

§ 42.24 Type-volume or page-limits for petitions, motions, oppositions, and replies.

(a) *Petitions and motions.* (1) The following word counts or page limits for petitions and motions apply and include any statement of material facts to be admitted or denied in support of the petition or motion. The word count or page limit does not include a table of contents, a table of authorities, grounds for standing under § 42.104, § 42.204, or § 42.304, mandatory notices under § 42.8, a certificate of service or word count, or appendix of exhibits or claim listing.

(i) Petition requesting *inter partes* review: 14,000 words.

(ii) Petition requesting post-grant review: 18,700 words.

(iii) Petition requesting covered business method patent review: 18,700 words.

(iv) Petition requesting derivation proceeding: 14,000 words.

(v) Motions (excluding motions to amend): 15 pages.

(vi) Motions to Amend: 25 pages.

(2) Petitions to institute a trial must comply with the stated word counts but may be accompanied by a motion to waive the word counts. The petitioner must show in the motion how a waiver of the word counts is in the interests of justice and must append a copy of proposed petition exceeding the word count to the motion. If the motion is not granted, the proposed petition exceeding the word count may be expunged or returned. Any other motion to waive word counts or page limits must be granted in advance of filing a motion, opposition, or reply for which the waiver is necessary.

(b) *Patent owner responses and oppositions.* The word counts or page limits set forth in this paragraph (b) do not include a listing of facts which are admitted, denied, or cannot be admitted or denied.

(1) The word counts for a patent owner preliminary response to petition are the same as the word counts for the petition.

(2) The word counts for a patent owner response to petition are the same as the word counts for the petition.

(3) The page limits for oppositions are the same as those for corresponding motions.

(c) *Replies.* The following word counts or page limits for replies apply and include any statement of facts in support of the reply. The word counts or page limits do not include a table of contents, a table of authorities, a listing of facts which are admitted, denied, or cannot be admitted or denied, a certificate of service or word count, or appendix of exhibits.

(1) *Replies to patent owner responses to petitions:* 5,600 words.

(2) *Replies to oppositions (excluding replies to oppositions to motions to amend):* 5 pages.

(3) *Replies to oppositions to motions to amend:* 12 pages.

(d) *Certification.* Any paper whose length is specified by type-volume limits must include a certification stating the number of words in the paper. A party may rely on the word count of the word-processing system used to prepare the paper.

■ 5. Section 42.70 is amended by revising paragraph (b) to read as follows:

§ 42.70 Oral argument.

* * * * *

(b) Demonstrative exhibits must be served at least seven business days before the oral argument and filed no later than the time of the oral argument.

Subpart B—Inter Partes Review

■ 6. Section 42.100 is amended by revising paragraph (b) to read as follows:

§ 42.100 Procedure; pendency.

* * * * *

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. A party may request a district court-type claim construction approach to be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request, accompanied by a party's certification, must be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.

* * * * *

■ 7. Section 42.107 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

§ 42.107 Preliminary response to petition.

(a) The patent owner may file a preliminary response to the petition. The response is limited to setting forth the reasons why no *inter partes* review should be instituted under 35 U.S.C. 314 and can include supporting evidence. The preliminary response is subject to the word count under § 42.24.

* * * * *

(c) [Reserved]

* * * * *

■ 8. Section 42.108 is amended by revising paragraph (c) to read as follows:

§ 42.108 Institution of inter partes review.

* * * * *

(c) *Sufficient grounds. Inter partes* review shall not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would demonstrate that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence, but a genuine issue of material fact created by such testimonial evidence will be viewed in the light most favorable to the petitioner solely for purposes of deciding whether to institute an *inter partes* review. A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.

Subpart C—Post-Grant Review

■ 9. Section 42.200 is amended by revising paragraph (b) to read as follows:

§ 42.200 Procedure; pendency.

* * * * *

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. A party may request a district court-type claim construction approach to be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request, accompanied by a party's certification, must be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.

* * * * *

■ 10. Section 42.207 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

§ 42.207 Preliminary response to petition.

(a) The patent owner may file a preliminary response to the petition. The response is limited to setting forth the reasons why no post-grant review should be instituted under 35 U.S.C. 324 and can include supporting evidence. The preliminary response is subject to the word count under § 42.24.

* * * * *

(c) [Reserved]

* * * * *

■ 11. Section 42.208 is amended by revising paragraph (c) to read as follows:

§ 42.208 Institution of post-grant review.

* * * * *

(c) *Sufficient grounds.* Post-grant review shall not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would, if unrebutted, demonstrate that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, including any testimonial evidence, but a genuine issue of material fact created by such testimonial evidence will be viewed in the light most favorable to the petitioner solely for purposes of deciding whether to institute a post-grant review. A petitioner may seek leave to file a reply to the preliminary response in accordance with §§ 42.23 and 42.24(c). Any such request must make a showing of good cause.

Subpart D—Transitional Program for Covered Business Method Patents

■ 12. Section 42.300 is amended by revising paragraph (b) to read as follows:

§ 42.300 Procedure; pendency.

* * * * *

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. A party may a request a district court-type claim construction approach to be applied if a party certifies that the involved patent will expire within 18 months from the entry of the Notice of Filing Date Accorded to Petition. The request, accompanied by a party's certification, must be made in the form of a motion under § 42.20, within 30 days from the filing of the petition.

* * * * *

Dated: March 28, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–07381 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[EPA–R09–OAR–2014–0547; FRL–9939–89–Region 9]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; California; Infrastructure Requirements for Ozone, Fine Particulate Matter ($PM_{2.5}$), Lead (Pb), Nitrogen Dioxide (NO_2), and Sulfur Dioxide (SO_2)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving several State Implementation Plan (SIP) revisions submitted by the State of California pursuant to the requirements of the Clean Air Act (CAA or the Act) for the

implementation, maintenance, and enforcement of national ambient air quality standards (NAAQS) for ozone, fine particulate patter ($PM_{2.5}$), lead (Pb), nitrogen dioxide (NO_2), and sulfur dioxide (SO_2). We refer to such SIP revisions as "infrastructure" SIPs because they are intended to address basic structural SIP requirements for new or revised NAAQS including, but not limited to, legal authority, regulatory structure, resources, permit programs, and monitoring necessary to assure attainment and maintenance of the standards. In addition, we are reclassifying certain regions of the state for emergency episode planning purposes with respect to ozone, NO_2, SO_2, and particulate matter (PM). Finally, we are approving into the California SIP several state provisions addressing CAA conflict of interest requirements and an emergency episode planning rule for Great Basin Unified Air Pollution Control District for PM.

DATES: This final rule is effective on May 2, 2016.

ADDRESSES: EPA has established a docket for this action, identified by Docket ID Number EPA–R09–OAR–2014–0547. The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed directly below.

FOR FURTHER INFORMATION CONTACT: Rory Mays, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3227, *mays.rory@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

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I. Background

EPA proposed action on several California infrastructure SIP submittals on October 23, 2014 (proposed rule).[1] Today's rule finalizes that proposal in its entirety with minor changes due to comments, rulemakings, and other information that has come to light over the past year. We briefly summarize the infrastructure SIP statutory requirements and the eight NAAQS and five California SIP submittals to which this final rule applies. Section II of this final rule presents our response to public comments and Section III describes our final action, including full approvals, partial approvals, partial disapprovals, and consequences of each partial disapproval.

The rationale supporting EPA's action is explained in our October 23, 2014 proposed rule and the five associated technical support documents (TSDs)[2] and will not be restated here. The proposed rule and TSDs are available in the docket for today's rulemaking and online at *http://www.regulations.gov,* Docket ID number EPA–R09–OAR–2014–0547.

A. Statutory Requirements

Section 110(a)(1) of the CAA requires each state to submit to EPA, within three years after the promulgation of a primary or secondary NAAQS or any revision thereof, an infrastructure SIP revision that provides for the implementation, maintenance, and enforcement of such NAAQS. Section 110(a)(2) of the CAA sets the content requirements of such a plan, which generally relate to the information and authorities, compliance assurances, procedural requirements, and control measures that constitute the "infrastructure" of a state's air quality management program. Two elements identified in section 110(a)(2) are not governed by the three-year submittal deadline of section 110(a)(1) and are therefore not addressed in this action. These two elements are: (i) Section 110(a)(2)(C) to the extent it refers to permit programs required under part D (nonattainment new source review (NSR)), and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure for the nonattainment NSR portion of section 110(a)(2)(C) or the whole of section 110(a)(2)(I).

B. NAAQS Addressed by This Final Rule

Between 1997 and 2012, EPA promulgated a series of new or revised NAAQS for ozone, $PM_{2.5}$, Pb, NO_2, and SO_2, each of which triggered the requirement for states to submit infrastructure SIPs. The NAAQS addressed by this infrastructure SIP final rule include the following:

- 1997 ozone NAAQS, which established 8-hour average primary and secondary ozone standards of 0.08 ppm, and revoked the 1979 1-hour ozone standard of 0.12 parts per million (ppm).[3]
- 2008 ozone NAAQS, which revised the 8-hour ozone standards to 0.075 ppm.[4]
- 1997 $PM_{2.5}$ NAAQS, which set 24-hour average primary and secondary $PM_{2.5}$ standards of 65 $\mu g/m^3$ and annual primary and secondary $PM_{2.5}$ standards of 15 $\mu g/m^3$.[5]
- 2006 $PM_{2.5}$ NAAQS, which revised the 1997 24-hour $PM_{2.5}$ standards to 35 $\mu g/m^3$, and retained the 1997 annual standards.[6]
- 2012 $PM_{2.5}$ NAAQS, which revised the 1997 and 2006 annual $PM_{2.5}$ standards to 12.0 $\mu g/m^3$, and retained the 2006 24-hour standards.[7]
- 2008 Pb NAAQS, which revised the 1978 Pb quarterly average standard of 1.5 $\mu g/m^3$ to a rolling 3-month average not to exceed 0.15 $\mu g/m^3$, and revised the secondary standard to 0.15 $\mu g/m^3$, making it identical to the revised primary standard.[8]
- 2010 NO_2 NAAQS, which revised the primary 1971 NO_2 annual standard of 53 parts per billion (ppb) by supplementing it with a new 1-hour average NO_2 standard of 100 ppb, and retained the secondary annual standard of 53 ppb.[9]
- 2010 SO_2 NAAQS, which established a new 1-hour average SO_2 standard of 75 ppb, retained the secondary 3-hour average SO_2 standard of 500 ppb, and established a mechanism for revoking the primary

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[1] 79 FR 63350, October 23, 2014.

[2] The five TSDs are as follows: 1) "California Infrastructure SIP Overarching Technical Support Document," September 2014 ("Overarching TSD"); 2) "California Infrastructure SIP Permit Programs Technical Support Document," September 2014 ("Permit Programs TSD"); 3) "California Infrastructure SIP Interstate Transport Technical Support Document," September 2014 ("Interstate Transport TSD"); 4) "California Infrastructure SIP Conflict of Interest Technical Support Document," September 2014 ("Conflict of Interest TSD"); and 5) "California Infrastructure SIP Emergency Episode Planning Technical Support Document," September 2014 ("Emergency Episode Planning TSD").

[3] 62 FR 38856, July 18, 1997.

[4] 73 FR 16436, March 27, 2008.

[5] 62 FR 38652, July 18, 1997.

[6] 71 FR 61144, October 17, 2006.

[7] 78 FR 3086, January 15, 2013.

[8] 73 FR 66964, November 12, 2008.

[9] 75 FR 6474, February 9, 2010. The annual NO_2 standard of 0.053 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

1971 annual and 24-hour SO_2 standards.[10]

C. California's Submittals

The California Air Resources Board (ARB) has submitted several infrastructure SIP revisions pursuant to EPA's promulgation of the NAAQS addressed by this final rule, including the following:

- November 16, 2007—"Proposed State Strategy for California's 2007 State Implementation Plan." Appendices B ("110(a)(2) Infrastructure SIP") and G ("Legal Authority and Other Requirements") contain California's infrastructure SIP revision for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. ("California's 2007 Submittal").[11] This submittal incorporates by reference California's section 110(a)(2) SIP submitted in response to the 1970 CAA and approved by EPA in 1979 in 40 CFR 52.220.
- October 6, 2011—"State Implementation Plan Revision for Federal Lead Standard Infrastructure Requirements," which addresses the 2008 Pb NAAQS. ("California's 2011 Submittal").
- December 12, 2012—"State Implementation Plan Revision for Federal Nitrogen Dioxide Standard Infrastructure Requirements," which addressed the 2010 NO_2 NAAQS. ("California's 2012 Submittal").
- March 6, 2014—"California Infrastructure SIP," which provided new submittals for the 2008 ozone, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS and supplemented and amended the state's prior infrastructure SIP submittals. ("California's 2014 Submittal").
- June 2, 2014—Great Basin Unified Air Pollution Control District (APCD) Rule 701 ("Air Pollution Episode Plan"), which addresses CAA section 110(a)(2)(G) for the 1987 coarse particulate matter (PM_{10}) NAAQS and 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS. ("Great Basin Rule 701").

We find that these submittals meet the procedural requirements for public participation under CAA section 110(a)(2) and 40 CFR 51.102. We are acting on all of these submittals since they collectively address the infrastructure SIP requirements for the NAAQS addressed by this final rule. We refer to them collectively herein as "California's Infrastructure SIP Submittals." Importantly, however, California has not made a submittal for the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, 2008 ozone, and 2010 SO_2 NAAQS.[12] Thus, as noted in our proposed rule, we are not addressing the requirements of section 110(a)(2)(D)(i)(I) with respect to these four NAAQS in this final rule.

II. EPA's Response to Comments

The public comment period on EPA's proposed rule opened on October 24, 2014, the date of its publication in the **Federal Register**, and closed on November 24, 2014. During this period, EPA received four comment letters, each of which is available in the docket to today's final rule.[13] Three letters relate to permitting requirements and we address each of those here. The fourth letter is from Wyoming Department of Environmental Quality[14] and supports EPA's approach to the review of infrastructure SIPs.

Comment #1:

Mr. Robert Ukeiley commented on EPA's proposal with respect to the permitting-related infrastructure SIP requirements for the prevention of significant deterioration (PSD).[15] Specifically, Mr. Ukeiley requested confirmation that the SIP-approved PSD permit programs for seven air districts (Eastern Kern, Imperial County, Monterey Bay Unified, Placer County, Sacramento Metro, San Joaquin Valley, and Yolo-Solano) include requirements for $PM_{2.5}$ increments or, for any air district whose SIP-approved PSD program lacks such requirements, that EPA disapprove the PSD-related infrastructure SIP elements. He also asked that EPA disapprove the PSD-related elements of the infrastructure SIP submittals for any air district whose SIP-approved PSD rules contain significant impact levels (SILs) provisions for $PM_{2.5}$.

Response to Comment #1:

We have confirmed that the SIP-approved PSD permit rules of the seven air districts named in Mr. Ukeiley's letter include $PM_{2.5}$ increment requirements that meet the federal requirements. Six of these air districts (Eastern Kern, Imperial County, Placer County, Sacramento Metro, San Joaquin Valley, and Yolo-Solano) incorporate the applicable federal regulations by reference and the date of such incorporation was after the effective date of the $PM_{2.5}$ increment requirements, thus ensuring their inclusion.[16] The remaining air district (Monterey Bay Unified) has a PSD permit rule that also includes the applicable $PM_{2.5}$ increment requirements.[17] Furthermore, EPA has finalized approval of the PSD permit rules for five additional air districts (Butte County, Feather River, Great Basin Unified, San Luis Obispo County, and Santa Barbara County),[18] each of which includes the applicable $PM_{2.5}$ increment requirements. Thus, we are finalizing approval of California's Infrastructure SIP Submittals for the PSD-related elements for these 12 air districts.

With respect to SILs for $PM_{2.5}$, on January 22, 2013, at EPA's request, the U.S. Court of Appeals for the District of Columbia vacated and remanded portions of EPA's significant impact levels (SILs) requirements for $PM_{2.5}$.[19] Later that year EPA removed the vacated portion of the SILs requirements from 40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2).[20] However, several SIP-approved PSD rules in California still include the vacated $PM_{2.5}$ SILs provisions.

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[10] 75 FR 35520, June 22, 2010. The 3-hour SO_2 standard of 0.5 ppm is listed in ppb for ease of comparison with the new 1-hour standard.

[11] California's November 16, 2007 Submittal is often referred to as California's 2007 State Strategy. EPA previously acted on Appendix C ("Revised Interstate Transport State Implementation Plan") of California's 2007 State Strategy, as modified by Attachment A of the same submittal, which contained California's SIP revision to address the interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. 76 FR 34872, June 15, 2011 and 76 FR 43175, July 20, 2011 (transport prongs 1 and 2); 76 FR 48002, August 8, 2011 and 76 FR 48006, August 8, 2011 (transport prong 3); and 76 FR 34608, June 14, 2011 and 76 FR 43149, July 20, 2011 (transport prong 4).

[12] California made an infrastructure SIP submittal for the 2006 $PM_{2.5}$ NAAQS on July 7, 2009 that was subsequently withdrawn on July 18, 2014. All infrastructure SIP requirements for that NAAQS are addressed in California's 2014 Submittal with the exception of the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I). Therefore, there is no California submittal before EPA with respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. EPA has issued a finding of failure to submit such SIP revisions. 79 FR 63536, October 24, 2014.

[13] *See* document numbers EPA–R09–OAR–2014–0547–0144 thru 0147 at *http://www.regulations.gov* under docket ID number EPA–R09–OAR–2014–0547.

[14] Letter from Todd Parfitt, Director, Wyoming Department of Environmental Quality, to Gina McCarthy, Administrator, U.S. EPA, November 24, 2014.

[15] Email from Robert Ukeiley to Rory Mays, U.S. EPA Region IX, October 24, 2014.

[16] The federal requirements for PSD increments for $PM_{2.5}$ became effective October 20, 2010 and thus air district PSD programs that incorporated the federal regulations by reference after this date include the applicable PSD increment requirements for $PM_{2.5}$. The adoption and SIP-approval dates of the SIP-approved PSD permit rules for five of these air districts are as follows: Eastern Kern (Rule 210.4, adopted January 12, 2012), Imperial County (Rule 904, adopted December 20, 2011), Placer County (Rule 518, adopted February 10, 2011), and Yolo-Solano (Rule 3.24 adopted June 13, 2012), which were each SIP-approved on December 10, 2012 (77 FR 7331); and Sacramento Metro (Rule 203, adopted January 27, 2011), which was SIP-approved on August 29, 2013 (78 FR 53271). San Joaquin Valley APCD's Rule 2410 (adopted June 16, 2011) was approved into the California SIP on October 26, 2012 (77 FR 65305), and similarly includes the applicable PSD increment requirements for $PM_{2.5}$. However, San Joaquin Valley is currently designated nonattainment for both the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS. Therefore, the SIP-approved PSD program does not apply to $PM_{2.5}$ emissions from new or modified major stationary sources.

[17] Monterey Bay Unified APCD Rule 207 (adopted April 20, 2011), which was SIP-approved on March 26, 2015 (80 FR 15899).

[18] 80 FR 69880, November 12, 2015.

Specifically, six of the 12 air districts in California with SIP-approved PSD permit rules include $PM_{2.5}$ SILs provisions, including Eastern Kern, Feather River, Imperial County, Placer County, Sacramento Metro, and San Joaquin Valley. Given the clarity of the Court's decision and EPA's removal of the vacated portion of the SILs requirements from 40 CFR 51.166(k)(2), it would now be inappropriate for any pending or proposed permits in these districts to rely on the $PM_{2.5}$ SILs provision in their rules as an absolute "safe harbor" when a substantial portion of the $PM_{2.5}$ NAAQS or increment is known to be consumed.[21] However, as we previously stated following the Court's decision, EPA does not interpret the Court's decision to preclude the use of SILs for $PM_{2.5}$ entirely.[22] Permitting authorities should consult with the EPA before using any of the SIL values in the EPA's regulations for this purpose (including the $PM_{2.5}$ SIL value in section 51.165(b)(2), which was not vacated by the Court).

EPA has advised the districts with $PM_{2.5}$ SILs that the Court determined to be invalid to begin preparations to remove those provisions as soon as feasible, which may be in conjunction with the next otherwise planned SIP revision. EPA has informed these districts that new permits issued solely on the basis of these SILs provisions are inconsistent with the Clean Air Act and may be difficult to defend in administrative and judicial challenges as they are without legal effect. However, as the previously approved $PM_{2.5}$ SILs provisions in the California SIP are no longer enforceable, EPA does not believe the existence of the provisions in the State's implementation plan precludes today's approval of the infrastructure SIP submissions as they relate to the PSD-related elements for these six districts for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS.

The PSD permit rules for the remaining six air districts (Butte County, Great Basin Unified, Monterey Bay Unified, San Luis Obispo County, Santa Barbara County, and Yolo-Solano) do not include any $PM_{2.5}$ SILs provision. Accordingly, we are finalizing approval of California's Infrastructure SIP Submittals for the PSD-related elements for all 12 air districts with SIP-approved PSD programs.

Comment #2:

Mojave Desert Air Quality Management District (AQMD) commented that EPA was incorrect in stating that the district's minor NSR program had not been approved into the California SIP.[23] The comment letter states that district Rules 1300, 201, and 219 cover preconstruction review of any equipment that emits air contaminants (and which is not exempt from permitting requirements) and that these rules have been approved into the California SIP. Accordingly, the district requested to be removed from the list of air districts that lack SIP-approved minor NSR programs.

Response to Comment #2:

EPA agrees that Mojave Desert AQMD indeed has a minor NSR program in the California SIP that is sufficient to approve California's Infrastructure SIP Submittals consistent with the requirement of section 110(a)(2)(C) that the SIP include a program for the regulation of minor sources, though with one clarification.

In reviewing the minor NSR permit programs of California's 35 air districts, EPA generally relied on permit programs that applied to the whole air district. However, in some cases we found that air districts with two or more counties had county-based minor NSR programs that had been approved into the California SIP and applied to the NAAQS addressed by this rulemaking. For example, for Feather River AQMD we found that minor NSR rules for each of the two counties in the air district, Yuba and Sutter counties, had been approved into the California SIP and covered the NAAQS addressed by our rulemaking.[24] On that basis, we proposed to partially approve California's infrastructure SIP Submittals with respect to this minor NSR requirement.

We inadvertently missed identifying the county-based minor NSR programs that have been approved into the California SIP for the portions of the two counties (San Bernardino and Riverside counties) that are within the jurisdiction of Mojave Desert AQMD. Specifically, EPA previously approved each county's Rule 201,[25] which require permits for all equipment that may emit air contaminants, and each county's Rule 102,[26] which define the term "air contaminants," into the California SIP. Rule 1300, which is a district-based, rather than county-based, rule, contains additional requirements for the district's minor NSR program.[27] These rules are sufficient to address the requirement of section 110(a)(2)(C) that the SIP include a program for the regulation of minor sources.

Thus, while Mojave Desert AQMD is correct that the district has sufficient minor NSR permit rules in the California SIP for purposes of CAA section 110(a)(2)(C), it is on the basis of the SIP-approved county-based Rules 102 and 201 that we remove Mojave Desert AQMD from the list of air districts that lack SIP-approved minor NSR programs. Please refer to section III of this final rule where we finalize this minor change from our proposed partial disapproval for Mojave Desert AQMD.[28]

Comment #3:

Northern Sonoma County Air Pollution Control District (APCD) states that its Board of Directors revised four regulations implementing the district's PSD program, for submittal through ARB as revisions to the California SIP, and that those revisions address the deficiencies identified in EPA's proposed rule.[29] Therefore, the district

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[19] *Sierra Club* v. *EPA*, 705 F.3d 458, 463–464 (D.C. Cir. 2013).

[20] 78 FR 73698, December 9, 2013.

[21] Five of the applicable districts (Eastern Kern, Feather River, Imperial County, Placer County, and Sacramento Metro) have provided letters to EPA indicating that they will implement their PSD rules consistent with this approach and EPA's Guidance for $PM_{2.5}$ Permit Modeling. *See* Memorandum from Stephen D. Page, Director, OAQPS, "Guidance for $PM_{2.5}$ Permit Modeling," May 20, 2014. For four of these districts, these letters are available in the dockets of the rulemakings on the districts' PSD rules: For Eastern Kern, Imperial County, and Placer County, *see* 77 FR 73316, December 10, 2012; and for Feather River, *see* 80 FR 69880, November 12, 2015. For Sacramento Metro, a copy of the district's letter dated October 1, 2015 is included in the docket to this final rule. For the San Joaquin Valley, the area is currently designated nonattainment for the 1997, 2006, and 2012 $PM_{2.5}$ NAAQS and, therefore, San Joaquin Valley APCD's SIP-approved PSD permit rule does not apply to $PM_{2.5}$ emissions from new or modified major stationary sources.

[22] U.S. EPA, Office of Air Quality Planning and Standards, "Circuit Court Decision on $PM_{2.5}$ Significant Impact Levels and Significant Monitoring Concentration, Questions and Answers," March 4, 2013, pp. 3–4.

[23] Letter from Karen Nowak, District Counsel, Mojave Desert AQMD, to Rory Mays, U.S. EPA Region IX, November 20, 2014.

[24] Permit Programs TSD, Appendix D ("California Minor NSR Permit Programs").

[25] 43 FR 52237, November 9, 1978.

[26] 55 FR 49281, November 27, 1990 for San Bernardino County and 43 FR 59489, December 21, 1978 for Riverside County.

[27] 61 FR 58133, November 13, 1996.

[28] Additionally, Mojave Desert AQMD's letter led us to reexamine the SIP status of minor source permit rules for the other four air districts that we proposed to partially disapprove for section 110(a)(2)(C). Our evaluation of the minor source programs for these four districts is discussed further in section III of this final rule.

[29] Letter from Barbara Lee, Air Pollution Control Officer, Northern Sonoma County APCD to Deborah

Continued

requested that EPA approve such PSD submittal and approve, rather than partially disapprove, Northern Sonoma County APCD with respect to the PSD-related infrastructure SIP requirements.

Response to Comment #3:

EPA received Northern Sonoma County APCD's PSD program SIP revision on December 11, 2014 and it became complete by operation of law on June 11, 2015. While we have begun our review of that SIP submittal, we have not yet issued any proposed or final rulemaking on the submittal. We anticipate proposing and finalizing action on that SIP submittal over the coming months, per the CAA section 110(k)(2) deadline for EPA to take final action within 12 months of a completeness determination. To the extent that the district's PSD SIP revision resolves the deficiency identified in our proposed rule on California's Infrastructure SIP Submittals (*i.e.*, requirements for a baseline date for PSD increments for $PM_{2.5}$), we would accordingly update the California SIP with respect to the PSD-related requirements of CAA section 110(a)(2) for Northern Sonoma County APCD.

III. Final Action

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSDs, and this final rule, EPA is approving in part and disapproving in part California's Infrastructure SIP Submittals for the 1997 ozone, 2008 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, 2008 Pb, 2010 NO_2, and 2010 SO_2 NAAQS. In the following subsections, we list the elements for which we are finalizing approval or disapproval and provide a summary of the basis for those elements that are partially disapproved. We also describe the consequences of our disapprovals.

A. Approvals and Partial Approvals

Based upon our evaluation, as presented in our proposed rule and our five TSDs, and additional information discussed below, EPA approves California's Infrastructure SIP Submittals with respect to the 1997 ozone, 2008 ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, 2008 Pb, 2010 NO_2, and 2010 SO_2 NAAQS for the following infrastructure SIP requirements. Partial approvals are indicated by the parenthetical "(in part)."

- Section 110(a)(2)(A): Emission limits and other control measures.
- Section 110(a)(2)(B) (in part): Ambient air quality monitoring/data system.
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources.
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport.[30]
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution.
- Section 110(a)(2)(E): Adequate resources and authority, conflict of interest, and oversight of local and regional government agencies.
- Section 110(a)(2)(F): Stationary source monitoring and reporting.
- Section 110(a)(2)(G) (in part): Emergency episodes.
- Section 110(a)(2)(H): SIP revisions.
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, PSD, and visibility protection.
- Section 110(a)(2)(K): Air quality modeling and submittal of modeling data.
- Section 110(a)(2)(L): Permitting fees.
- Section 110(a)(2)(M): Consultation/participation by affected local entities.

i. Approval of State and Local Provisions Into the California SIP

As part of these approvals, we also approve several state statutes and regulations and one air district rule into the California SIP. Specifically, for all of the NAAQS addressed in this proposal, we approve into the SIP five state provisions from the California Government Code statutes and California Code of Regulations, which were submitted in California's 2014 Submittal and address the conflict of interest requirements of CAA sections 110(a)(2)(E)(ii) and 128. These provisions include California Government Code, Title 9, Sections 82048, 87103, and 87302, and California Code of Regulations, Title 2, Sections 18700 and 18701. For discussion of these conflict of interest provisions, please see our Conflict of Interest TSD.

We also approve Great Basin Unified Air Pollution Control District (APCD) Rule 701 into the California SIP with respect to the 1987 PM_{10}, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H. For our evaluation of this emergency episode rule, please refer to our Emergency Episode Planning TSD.

ii. Approval of Reclassification Requests for Emergency Episode Planning

California's 2012 and 2014 Submittals requested that EPA reclassify several air quality control regions (AQCRs) with respect to the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H, as applicable to ozone, NO_2, and SO_2. In our proposed rule, we stated that the authority to take final action to reclassify AQCRs is reserved by the EPA Administrator. That conclusion was based upon prior examples from 1980 and 1981 where the Administrator reclassified certain AQCRs in Arizona, California, and Nevada[31] and upon our initial review of EPA's Delegations Manual.[32] However, we have since reviewed the earlier versions of EPA's regulations that gave rise to the emergency episode regulations in 40 CFR part 51, subpart H,[33] and re-reviewed the Delegations Manual. In particular, Delegation 7–10 ("Approval/Disapproval of State Implementation Plans") was established in 1989 and grants Regional Administrators the authority to "propose or take final action on any State implementation plan under Section 110 of the Clean Air Act." In the context of EPA acting on emergency episode SIP revisions, whether as part of an infrastructure SIP revision or an independent SIP revision, consistent with CAA section 110(a)(2)(G) (*i.e.*, part of section 110 of the CAA), and our implementing regulations at 40 CFR part 51, subpart H, whose requirements are dependent upon AQCR classification, we find that

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Jordan, Director, Air Division, U.S. EPA Region IX, November 24, 2014.

[30] As noted in section I of this final rule, California has not made a submittal for the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, 2008 ozone, and 2010 SO_2 NAAQS. Thus we are not taking any action with respect to the requirements of section 110(a)(2)(D)(i)(I) with respect to these four NAAQS in this final rule.

[31] *See* 45 FR 67345, October 10, 1980 for Arizona; 46 FR 3883, January 16, 1981 for California; and 45 FR 7544, February 4, 1980 for Nevada.

[32] EPA's Delegations Manual, Chapter 7 ("Clean Air Act"), available at: *http://intranet.epa.gov/ohr/rmpolicy/ads/dm/index7.htm*.

[33] *See* the 1983 versions of 40 CFR 51.3 ("Classification of regions") and 40 CFR 51.16 ("Prevention of air pollution emergency episodes"), which refer to CAA sections 110, 301(a), 313, and 319 as the statutory basis for such regulations. (By contrast, 40 CFR part 51, subpart H does not have statutory citations.) Section 301(a) grants the Administrator authority to prescribe regulations necessary to carry out the CAA, which, as applied here, refers to the emergency episode requirements of section 110(a)(2)(G). Section 301(a) also limits the Administrator's ability to delegate authority regarding rules that are required to be promulgated under the procedures of section 307(d). Since classifications are not among the procedures of section 307(d)(1), there is no restriction on the Administrator's authority to delegate decision-making on area classification, such as those for emergency episode planning.

EPA's Regional Administrators indeed have authority to reclassify AQCRs for purposes of emergency episode planning.

Accordingly, on the basis of California's ambient air quality data for 2011–2013 and the evaluation presented in our proposed rule and Emergency Episode Planning TSD, we hereby grant five of California's ten requests, and deny the five remaining requests, to reclassify AQCRs for emergency episode planning purposes for ozone, NO_2, and SO_2. We also are reclassifying two AQCRs for PM as part of our evaluation of the State's emergency episode planning for the $PM_{2.5}$ NAAQS.

For ozone, we reclassify two AQCRs, Lake Tahoe and North Central Coast, to Priority III. We deny the State's reclassification requests for ozone for five AQCRs, including Mountain Counties, Sacramento Valley, San Diego, San Francisco Bay Area, and Southeast Desert. As a result, upon the effective date of this final rule, California will have seven Priority I AQCRs for ozone, including the five for which we deny California's reclassification request and two others (Metropolitan Los Angeles and San Joaquin Valley AQCRs). California's applicable air districts have adequate emergency episode contingency plans for ozone for six of these seven Priority I areas, including Metropolitan Los Angeles, Sacramento Valley, San Diego, San Francisco Bay Area, San Joaquin Valley, and Southeast Desert AQCRs. Therefore, we partially approve California's 2007 and 2014 Submittals with respect to the 1997 ozone and 2008 ozone NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G). Please see section III.B.iii of this final rule for our partial disapproval of these submittals with respect to the Mountain Counties AQCR.

For NO_2, we reclassify the Metropolitan Los Angeles AQCR to Priority III. As a result, upon the effective date of this final rule, the whole state will be classified Priority III for NO_2, and therefore no emergency episode contingency plan for NO_2 will be required for any of the state's 14 AQCRs. Accordingly, we approve California's 2012 and 2014 Submittals with respect to the 2010 NO_2 NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

For SO_2, we reclassify the Metropolitan Los Angeles and San Francisco Bay Area AQCRs to Priority III. As a result, upon the effective date of this final rule, the whole state will be classified Priority III for SO_2, and therefore no emergency episode contingency plan for SO_2 will be required for any of the state's 14 AQCRs. Thus, we approve California's 2014 Submittal with respect to the 2010 SO_2 NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

For PM, we identified two areas where concentrations exceeded EPA's recommended 24-hour $PM_{2.5}$ threshold of 140.4 $\mu g/m^3$ for emergency episode planning:[34] Great Basin Valley AQCR and San Joaquin Valley AQCR. For these two areas, we also reviewed the 24-hour PM_{10} air quality data to determine the appropriate emergency episode classification under 40 CFR 51.150. Accordingly, for PM, we reclassify Great Basin Valley AQCR to Priority I and San Joaquin Valley AQCR to Priority II. As discussed in section III.A.i of this final rule, we are approving Great Basin Unified APCD Rule 701 into the California SIP and, as such, Great Basin Unified APCD has an adequate emergency episode contingency plan for PM. Therefore, we partially approve California's 2007 and 2014 Submittals with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G). Please see section III.B.iii of this final rule for our partial disapproval of these submittals with respect to the San Joaquin Valley AQCR.

iii. Approval of CAA Section 110(a)(2)(C) for Minor NSR

EPA previously proposed to partially disapprove five of California's 35 air districts for CAA section 110(a)(2)(C) with respect to minor NSR on the basis that they each lacked permit rules for minor sources in the California SIP.[35] Upon further review of the California SIP and comments received during the public comment period, EPA has found that each of these air districts does, in fact, have permit rules for minor sources in the California SIP that cover all NAAQS, as discussed below.

As noted in Mojave Desert AQMD's comment letter, Mojave Desert AQMD has county-based minor NSR rules in the California SIP for each of its two counties (San Bernardino and Riverside counties), which we inadvertently missed during our original evaluation of the California Infrastructure SIP Submittals.[36] This also led us to reexamine the SIP status of minor source permit rules for the other four air districts that we had proposed to partially disapprove for section 110(a)(2)(C), including Lake County, Mariposa County, Northern Sierra (Plumas and Sierra counties, only),[37] and Tuolumne County. This reexamination involved reviewing the original copies of California's SIP submittals dated February 22, 1972 and June 30, 1972; EPA's approval of these submittals, as codified at 40 CFR 52.220 (b) and (c)(6); a copy of the California SIP as it existed in August 1978; subsequent EPA rulemakings that revised the California SIP; and other historic records as they pertain to these four air districts.[38]

We determined that, for each of the five remaining counties (Lake, Mariposa, Plumas, Sierra, and Tuolumne counties) in these four districts, the county-based rules that constitute each county's minor source permit program were approved into the California SIP[39] and have never been removed or replaced. These minor source permit programs require minor sources to obtain an Authority to Construct permit prior to construction and cover all NAAQS through a broad definition of the term "air contaminants" that includes all NAAQS and their precursors. Since the basis of our proposed partial disapproval is no longer applicable (*i.e.*, lack of a SIP-approved permit program for minor sources) and as these districts now meet the same test used to propose approval for other districts (*i.e.*, having such a program in the SIP that applies to all NAAQS addressed by this final rule), we are finalizing approval for these five additional districts, including Lake County, Mariposa County, Mojave Desert, Northern Sierra, and Tuolumne County, as meeting the requirements of

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[34] *See* Memorandum from William T. Harnett, Director, Air Quality Policy Division, OAQPS, "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards," September 25, 2009, pp. 6–7 and Attachment B ("Recommended Interim Significant Harm Level, Priority Levels, and Action Levels for $PM_{2.5}$ Emergency Episode Plans (EEPs)").

[35] 79 FR 63350 at 63359, October 23, 2014, and our Permit Programs TSD, pp. 8–10.

[36] *See* section II of this final rule.

[37] Note that we had proposed to partially disapprove Northern Sierra AQMD for Plumas and Sierra counties only, since we had already identified Nevada County as having a SIP-approved minor NSR program. *See* 79 FR 63350 at 63359, footnote 35, October 23, 2014 and our Permit Programs TSD, footnote 34, p. 9.

[38] *See* Memorandum from Laura Yannayon, EPA Region IX to R. Mays, EPA Region IX, "Investigation of Approved SIP Contents for Lake, Tuolumne, Mariposa, Plumas and Sierra Counties, related to minor source permit programs," October 30, 2015. This memorandum, as well as short narratives on each of the five counties, are included in the docket to this final rule.

[39] 37 FR 10842, May 31, 1972 and 37 FR 19812, September 22, 1972.

CAA sections 110(a)(2)(C) with respect to minor NSR.

In sum, all 35 air districts in California have minor NSR permit programs in the California SIP that cover all NAAQS. Notwithstanding this approval, to the extent that air districts have revised their permit rules for minor sources and such revisions are not yet reflected in the California SIP, we recommend that such districts work with ARB to submit SIP revisions to revise the California SIP.

B. Partial Disapprovals

EPA partially disapproves California's Infrastructure SIP Submittals with respect to the NAAQS identified for each of the following infrastructure SIP requirements (details of the partial disapprovals are presented after this list):

- Section 110(a)(2)(B) (in part): Ambient air quality monitoring/data system (for the 1997 ozone and 2008 ozone NAAQS for the Bakersfield Metropolitan Statistical Area (MSA) in San Joaquin Valley APCD).
- Section 110(a)(2)(C) (in part): Program for enforcement of control measures and regulation of new and modified stationary sources (for all NAAQS addressed by this final rule due to PSD program deficiencies in certain air districts).
- Section 110(a)(2)(D)(i) (in part): Interstate pollution transport (for all NAAQS addressed by this final rule due to PSD program deficiencies in certain air districts).
- Section 110(a)(2)(D)(ii) (in part): Interstate pollution abatement and international air pollution (for all NAAQS addressed by this final rule due to PSD program deficiencies in certain air districts).
- Section 110(a)(2)(G) (in part): Emergency episodes (for the 1997 ozone and 2008 ozone NAAQS for the Mountain Counties AQCR, and for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS for the San Joaquin Valley AQCR).
- Section 110(a)(2)(J) (in part): Consultation with government officials, public notification, PSD, and visibility protection (for all NAAQS addressed by this final rule due to PSD program deficiencies in certain air districts).

i. Ambient Air Monitoring Partial Disapproval

We partially disapprove California's 2007 and 2014 Submittals for CAA section 110(a)(2)(B) with respect to the 1997 ozone and 2008 ozone NAAQS for the Bakersfield MSA portion of the California SIP because the ozone monitor located at the Arvin-Bear Mountain Road site, which had been the maximum ozone concentration monitor in the Bakersfield MSA, was closed without an approved replacement site. The requirement to have such a maximum ozone concentration monitor is found in 40 CFR part 51, Appendix D, 4.1(b) and the requirement that modifications to a monitoring network must be reviewed and approved by the relevant Regional Administrator is found in 40 CFR 58.14(b).

ii. Permit Program-Related Partial Disapprovals

We partially disapprove portions of California's Infrastructure SIP Submittals with respect to the PSD-related requirements of sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) for several air districts because the California SIP does not fully satisfy the statutory and regulatory requirements for PSD permit programs as to those air districts.

With respect to interstate transport requirement of CAA section 110(a)(2)(D)(i)(II), we also considered the status of the nonattainment NSR programs of the applicable California air districts and hereby approve California's Infrastructure SIP Submittals for this aspect of the interstate transport requirements. Lastly, regarding section 110(a)(2)(D)(ii) and compliance with the requirement of section 126(a) for proposed, major new or modified sources to notify all potentially affected, nearby states, as applicable, we partially disapprove California's Infrastructure SIP Submittals for multiple air districts. We provide a summary of the basis and district-by-district accounting of our partial disapprovals in the following paragraphs, including consideration of comments from Northern Sonoma County APCD, and review of EPA rulemaking on PSD and nonattainment NSR SIP submittals that has occurred since our proposal on California's Infrastructure SIP Submittals.

PSD Permit Programs

We reviewed the permit programs of California's 35 air districts for SIP-approved provisions to address PSD requirements that we consider "structural" for purposes of sections 110(a)(2)(C), (D)(i)(II), and (J), including the following requirements that were most recently added to the federal PSD regulations: Provisions identifying nitrogen oxides (NO_X) as ozone precursors; provisions to regulate $PM_{2.5}$, including condensable $PM_{2.5}$, $PM_{2.5}$ precursor emissions, and PSD increments for $PM_{2.5}$; and provisions to regulate greenhouse gases (GHGs). For the PSD requirements for GHGs, we conducted our evaluation consistent with the recent changes to the application of such requirements due to the U.S. Supreme Court decision of June 23, 2014, as discussed in section II.D of our proposed rule.[40]

We proposed to approve seven air districts as meeting the structural PSD requirements. Our proposed approval of one of these seven air districts, Monterey Bay Unified APCD, was contingent on finalizing approval of the district's PSD SIP revision.[41] We have taken final action on that SIP revision, approving provisions into the California SIP that resolve the deficiencies identified in our proposed rule.[42] Thus, we finalize approval of seven districts, including Eastern Kern, Imperial County, Monterey Bay Unified, Placer County, Sacramento Metro, San Joaquin Valley, and Yolo-Solano air districts, as meeting the PSD-related requirements of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for all NAAQS addressed by this final rule.

In addition, our proposed rule on California's Infrastructure SIP Submittals identified eight air districts that had submitted PSD SIP revisions for which EPA had not yet proposed or finalized action.[43] We proposed to partially disapprove these districts with respect to the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J) since they were subject to the existing PSD FIP at 40 CFR 52.21, rather than SIP-approved PSD programs. We have since finalized approval of the PSD SIP revisions of five of those eight districts,[44] including provisions addressing the same structural PSD requirements as we relied on to propose approval for the set of seven districts discussed above. Since the basis of our proposed partial disapproval is no longer applicable and as these districts now meet the same test used to propose approval for other districts, we are finalizing approval for these five additional districts, including Butte County, Feather River, Great Basin Unified, San Luis Obispo County, and Santa Barbara County, as meeting the PSD-related requirements of CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for all NAAQS addressed by this final rule. In sum, 12 of California's 35 air districts meet the PSD-related requirements for these infrastructure SIP elements.

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[40] *Utility Air Regulatory Group* v. *Environmental Protection Agency,* 134 S. Ct. 2427. EPA has since amended the federal PSD program regulations to allow for the rescission of certain PSD permits issued by EPA and delegated reviewing authorities (*e.g.,* California air districts) for purposes of regulating GHGs. *See* 80 FR 26183, May 7, 2015. Notwithstanding those amendments, PSD programs must still include provisions to regulate GHGs and such provisions continue to be relevant to our review of infrastructure SIPs.

[41] 79 FR 63350 at 63358, October 23, 2014.

[42] 80 FR 15899, March 26, 2015. We finalized a limited approval and limited disapproval of Monterey Bay Unified APCD's PSD SIP revision. While not a full approval, that final rule approved provisions into the California SIP for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, or PSD increments for $PM_{2.5}$.

[43] 79 FR 63350 at 63359, October 23, 2014.

[44] 80 FR 69880, November 12, 2015.

Four other air districts, including Mendocino County, North Coast Unified, Northern Sonoma County, and South Coast air districts, partially meet and partially do not meet the structural PSD requirements.

South Coast AQMD has a SIP-approved PSD program for GHGs only, but lacks a SIP-approved PSD program to address any other regulated NSR pollutant. Thus, we partially disapprove California's Infrastructure SIP Submittals with respect to South Coast AQMD for the PSD-related requirement of sections 110(a)(2)(C), (D)(i)(II), and (J).[45]

North Coast Unified AQMD has a SIP-approved PSD program that, on the whole, addresses all regulated NSR pollutants. However, it does not explicitly regulate NO_X as an ozone precursor and does not include requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, or PSD increments for $PM_{2.5}$. Therefore, we partially disapprove California's Infrastructure SIP Submittals with respect to North Coast Unified AQMD for these specific deficiencies for PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J).

Mendocino County AQMD and Northern Sonoma County APCD each have SIP-approved PSD programs that generally address the structural PSD requirements, but do not include requirements for a baseline date for PSD increments for $PM_{2.5}$. As discussed in section II of this final rule, Northern Sonoma County APCD has submitted a PSD SIP revision that is pending rulemaking by EPA within the time afforded by CAA section 110(k)(2). To the extent that Northern Sonoma County APCD's PSD SIP revision resolves the deficiency identified in our proposed rule on California's Infrastructure SIP Submittals (*i.e.*, requirements for a baseline date for PSD increments for $PM_{2.5}$), such requirements have not yet been approved into the California SIP and, thus, the deficiency remains. Accordingly, we partially disapprove California's Infrastructure SIP Submittals with respect to Mendocino County AQMD and Northern Sonoma County APCD for this specific deficiency in the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J).

The remaining 19 air districts are subject to the existing PSD FIP in 40 CFR 52.21, including Amador County, Antelope Valley, Bay Area, Calaveras County, Colusa County, El Dorado County, Glenn County, Lake County, Lassen County, Mariposa County, Modoc County, Mojave Desert, Northern Sierra, San Diego County, Shasta County, Siskiyou County, Tehama County, Tuolumne County, and Ventura County.

At the time of our proposal on California's Infrastructure SIP Submittals, three of these districts (Bay Area, San Diego County, and Ventura County air districts) had submitted PSD SIP revisions for which EPA had not yet proposed or finalized action. EPA has proposed a limited approval and limited disapproval of the SIP revision from Bay Area AQMD, noting that most of the submittal's rules satisfy applicable requirements under CAA section 110(a)(2)(C) for the regulation of the modification and construction of stationary sources.[46] However, as we have not yet finalized that proposal, the Bay Area AQMD remains subject to the PSD FIP in 40 CFR 52.21. San Diego County APCD withdrew its PSD SIP submittal on June 10, 2015, while Ventura County APCD's submittal is pending EPA rulemaking. These two districts similarly remain subject to the PSD FIP at this time.

Accordingly, we partially disapprove California's Infrastructure SIP Submittals as to each of these 19 air districts with respect to the PSD-related requirements of section 110(a)(2)(C), (D)(i)(II), and (J). As discussed further in section III.C of this final rule, the partial disapprovals with respect to these 19 districts would not result in new FIP obligations, because EPA has already promulgated a PSD FIP for each district.

Nonattainment NSR Permit Programs

With respect to interstate transport requirement of CAA section 110(a)(2)(D)(i)(II), in addition to reviewing the air districts' PSD programs, we also reviewed the nonattainment NSR programs of California's 22 air districts that are designated nonattainment for ozone, $PM_{2.5}$, or Pb, as applicable.[47] Because the PSD and nonattainment NSR permitting programs currently applicable in each area require a demonstration that new or modified sources will not cause or contribute to air pollution in excess of the NAAQS in neighboring states or that sources in nonattainment areas procure offsets, states may satisfy the PSD-related requirement of section 110(a)(2)(D)(i)(II) by submitting SIPs confirming that major sources and major modifications in the state are subject to PSD programs that implement current requirements and nonattainment NSR programs that address the NAAQS pollutants for which areas of the state that have been designated nonattainment. We refer to this aspect of section 110(a)(2)(D)(i)(II) herein as the "nonattainment NSR element."

We find that California meets the nonattainment NSR element of section 110(a)(2)(D)(i)(II) through a variety of mechanisms, as follows. Nine of the 22 air districts with nonattainment areas meet the nonattainment NSR element via SIP-approved programs, including the following air districts: Antelope Valley, Eastern Kern, Mojave Desert, Placer County, San Diego County, and Ventura County (for the 1997 ozone and 2008 ozone NAAQS); Sacramento Metro and Feather River (for the 1997 ozone, 2008 ozone, and 2006 $PM_{2.5}$ NAAQS); and San Joaquin Valley (for the 1997 ozone, 2008 ozone, 1997 $PM_{2.5}$, and 2006 $PM_{2.5}$ NAAQS). Since the time of our proposal on California's Infrastructure SIP Submittals, we finalized approval of South Coast AQMD's nonattainment NSR SIP revision with respect to the $PM_{2.5}$ NAAQS.[48] As a result, this district implements its SIP-approved nonattainment NSR program for the portions of the district that are designated nonattainment for the 1997 ozone, 2008ozone, 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2012 $PM_{2.5}$, and 2008 Pb NAAQS. Thus, South Coast AQMD also meets the nonattainment NSR element via a SIP-approved program.

An additional eight air districts, which have each been designated nonattainment for more than one NAAQS, have affirmed that they implement the interim nonattainment NSR program in 40 CFR part 51, Appendix S, including the following districts: Calaveras County, Mariposa County, and Northern Sierra (for the 1997 ozone and 2008 ozone NAAQS); and Bay Area, Butte County, El Dorado County, Imperial County, and Yolo-

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[45] We note that South Coast AQMD is subject to the PSD FIP in 40 CFR 52.21 for all regulated NSR pollutants except GHGs (*see* 40 CFR 52.270(b)(10)).

[46] 80 FR 52236 at 52243, August 28, 2015.

[47] No area of California has been designated nonattainment for the 2010 NO_2 or 2010 SO_2 NAAQS.

[48] 80 FR 24821, May 15, 2015.

Solano (for the 1997 ozone, 2008 ozone, and 2006 $PM_{2.5}$ NAAQS).[49]

Two other districts, Amador County APCD and Tuolumne County APCD, are designated nonattainment only for the 1997 ozone NAAQS. EPA revoked that NAAQS as part of the final implementation rule for the 2008 ozone NAAQS,[50] which relieves these two air districts of the requirement to submit nonattainment NSR SIP revisions.[51]

Lastly, portions of San Luis Obispo County APCD and Tehama County APCD are designated nonattainment only for the 2008 ozone NAAQS. Until SIP revisions are submitted by these two districts and approved by EPA, the districts are required to implement 40 CFR part 51, Appendix S for any new or modified major source emitting an applicable nonattainment pollutant (*i.e.,* NO_X or volatile organic compounds) in the respective nonattainment areas.[52]

In sum, we approve California's Infrastructure SIP Submittals for the 22 air districts designated nonattainment for ozone, $PM_{2.5}$, or Pb (as applicable) with respect to the nonattainment NSR element of the interstate transport requirement of section 110(a)(2)(D)(i)(II).

Interstate Pollution Abatement and International Air Pollution

As described in section IV.B.i of our proposed rule, with respect to the international pollution abatement requirement in CAA section 110(a)(2)(D)(ii), we noted that EPA has no reason to approve or disapprove any existing state rules with regard to CAA section 115 since the EPA Administrator has made no formal notification that emissions originating in California endanger public health or welfare in a foreign country. With respect to the interstate pollution abatement requirement in CAA section 110(a)(2)(D)(ii), we evaluated California's 2014 Submittal only for purposes of compliance with section 126(a).[53] Section 126(a) of the Act requires that each SIP require that proposed, major new or modified sources, which may significantly contribute to violations of the NAAQS in any air quality control region in other states, to notify all potentially affected, nearby states.

We proposed that 10 of California's 35 air districts have SIP-approved PSD permit programs that require notice to nearby states consistent with EPA's relevant requirements, and proposed to partially disapprove the remaining 25 air district with respect to CAA section 110(a)(2)(D)(ii). We have since finalized approval of the PSD SIP revisions of five additional districts,[54] including Butte County, Feather River, Great Basin Unified, San Luis Obispo County, and Santa Barbara County, which similarly require notice to nearby states consistent with EPA's relevant requirements. Thus, the basis of our proposed partial disapproval is no longer applicable with respect to these five districts and these districts meet the same test used to propose approval for other districts.

We therefore approve California's 2014 Submittal for section 110(a)(2)(D)(ii) regarding compliance with the requirements of section 115 for the whole state and with respect to section 126(a) for the following 15 air districts: Butte County, Eastern Kern, Feather River, Great Basin Unified, Imperial County, Mendocino County, Monterey Bay Unified, North Coast Unified, Northern Sonoma County, Placer County, Sacramento Metro, San Joaquin Valley, San Luis Obispo County, Santa Barbara County and Yolo-Solano.

The remaining 20 air districts are deficient with respect to the PSD requirements in part C, title I of the Act and with respect to the requirement in CAA section 126(a) regarding notification to affected, nearby states of major new or modified sources proposing to locate in these remaining air districts. Therefore, we partially disapprove California's Infrastructure SIP Submittals for section 110(a)(2)(D)(ii) regarding compliance with the requirements of section 126(a) for the following 20 air districts: Amador County, Antelope Valley, Bay Area, Calaveras County, Colusa County, El Dorado County, Glenn County, Lake County, Lassen County, Mariposa County, Modoc County, Mojave Desert, Northern Sierra, San Diego County, Shasta County, Siskiyou County, South Coast, Tehama County, Tuolumne County, and Ventura County.

iii. Emergency Episode Planning Partial Disapprovals

Mountain Counties AQCR for Ozone

As described in section III.A.ii of this final rule, we deny California's request to reclassify the Mountain Counties AQCR to Priority III for ozone. Of the seven air districts that comprise the Mountain Counties AQCR, only El Dorado County APCD and Placer County APCD recorded 1-hour ozone levels above the Priority I ozone threshold of 0.10 ppm during 2011–2013. We proposed that to satisfy the requirements of 40 CFR 51.151 for contingency plans for Mountain Counties AQCR, California needed to provide emergency episode contingency plans applicable to ozone for El Dorado County APCD and Placer County APCD. We maintain that position in this final rule. Since the time of our proposal, Placer County APCD adopted and submitted an ozone emergency episode contingency plan that we have approved into the California SIP.[55] However, El Dorado County APCD still does not have a SIP-approved ozone emergency episode plan.[56] Therefore, we partially disapprove California's 2007 and 2014 Submittals for the Mountain Counties AQCR (for El Dorado County APCD only) with respect to the 1997 ozone and 2008 ozone NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

San Joaquin Valley AQCR for $PM_{2.5}$

As discussed in section III.A.ii of this final rule, we reclassify San Joaquin Valley AQCR from Priority I to Priority II for PM emergency episode planning. However, San Joaquin Valley APCD's SIP-approved emergency episode plan, which comprises multiple rules under the district's Regulation 6 ("Air Pollution Emergency Episodes"), still does not have provisions specific to $PM_{2.5}$. As such, we partially disapprove California's 2007 and 2014 Submittals for San Joaquin Valley AQCR with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2012 $PM_{2.5}$ NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G).

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[49] EPA has proposed a limited approval and limited disapproval of the SIP revision from Bay Area AQMD submitted to address the outstanding nonattainment NSR requirements. 80 FR 52236, August 28, 2015. However, as we have not yet finalized that proposal, we continue to rely on the Bay Area AQMD's implementation of 40 CFR part 51, Appendix S for purposes of the nonattainment NSR element.

[50] 80 FR 12264, March 6, 2015.

[51] This scenario also applies to the Sutter Buttes area within Feather River AQMD that is designated nonattainment for the 1997 ozone NAAQS. However, the southern portion of Feather River AQMD is designated nonattainment for both the 1997 ozone and 2008 ozone NAAQS. Thus, the requirement for this air district to submit a nonattainment NSR SIP revision remains, though it no longer applies to the Sutter Buttes area.

[52] We note that Tehama County APCD has adopted and transmitted nonattainment NSR SIP provisions for the 2008 ozone NAAQS to ARB for submittal to EPA as a SIP revision. *See* Letter dated September 4, 2015 from Kristin Hall-Stein, Air Pollution Control Officer, Tehama County APCD to Carol Sutkus, ARB.

[53] 79 FR 63350 at 63360, October 23, 2014.

[54] 80 FR 69880, November 12, 2015.

[55] *See* direct final rule approving Placer County APCD Ozone Emergency Episode Plan, signed October 26, 2015, which is included in the docket to this final rule.

[56] We note that El Dorado County APCD issued a notice of public hearing in October 2015 of its proposed ozone emergency episode plan to be heard at the District's December 1, 2015 board hearing. This notice is included in the docket to this final rule and is available at: *http://www.edcgov.us/AirQualityManagement.*

iv. General Note on Disapprovals

EPA takes a disapproval of a state plan very seriously, as we believe that it is preferable, and preferred in the provisions of the Clean Air Act, that these requirements be implemented through state plans. A state plan need not contain exactly the same provisions that EPA might require, but EPA must be able to find that the state plan is consistent with the requirements of the Act. Further, EPA's oversight role requires that it assure consistent implementation of Clean Air Act requirements by states across the country, even while acknowledging that individual decisions from source to source or state to state may not have identical outcomes. EPA believes these disapprovals are the only path that is consistent with the Act at this time.

C. Consequences of Proposed Disapprovals

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. California's Infrastructure SIP Submittals were not submitted to meet either of these requirements. Therefore, the partial disapprovals in this final rule will not trigger mandatory sanctions under CAA section 179.

Section 110(c)(1) of the Act provides that EPA must promulgate a FIP within two years after finding that a state has failed to make a required submittal or disapproving a SIP submittal in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. However, many of these partial disapprovals finalized by this final rule do not result in new FIP obligations, either because EPA has already promulgated a FIP to address the identified deficiency or because a FIP deadline has been triggered by EPA's disapproval of a prior SIP submittal based on the same identified deficiency or by a prior finding of failure to submit.

When preparing our proposed rule, we inadvertently did not consider existing FIP deadlines that were triggered by prior findings of failure to submit for the 1997 $PM_{2.5}$ and 2008 ozone NAAQS in our description of FIP deadlines that would result from our proposed, partial disapprovals. In October 2008 EPA found that California's applicable certification letter had failed to address the emergency episode planning requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS and established a FIP deadline of November 21, 2010.[57] In January 2013 EPA found that California had failed to submit an infrastructure SIP for the requirements of sections 110(a)(2)(A)–(C), (D)(i)(II), (D)(ii), (E)–(H), and (J)–(M) for the 2008 ozone NAAQS and established a FIP deadline of February 14, 2015, while noting that the findings did not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements of sections 110(a)(2)(C), (D)(i)(II), (D)(ii), or (J) for portions of California (*i.e.*, air districts) that were already subject to the PSD FIP in 40 CFR 52.21.[58]

For the most part, the approval actions taken in this final rule obviate the basis of the FIP obligations established by EPA's findings of failure to submit discussed above. The remaining FIP obligations stemming from these findings are relevant with respect to outstanding deficiencies for ozone related to ambient monitoring and emergency episode planning, and an outstanding deficiency for $PM_{2.5}$ related to emergency episode planning.

Accordingly, we describe the consequences of our partial disapprovals first for those where a FIP is already in place, then for those that have FIP obligations that are overdue, and finally for those that establish new FIP obligations.

The provisions for which our partial disapprovals do not result in a new FIP obligation include:

- PSD-related requirements in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) in the 19 air districts identified in section III.B.ii of this final rule, which are subject to the PSD FIP in 40 CFR 52.21 for the NAAQS and GHGs (*see* 40 CFR 52.270).
- PSD-related requirements in sections 110(a)(2)(C), (D)(i)(II), (D)(ii), and (J) in South Coast AQMD, which is subject to the PSD FIP in 40 CFR 52.21 for all regulated NSR pollutants except GHGs (*see* 40 CFR 52.270(b)(10)).
- PSD requirement in sections 110(a)(2)(C), (D)(i)(II), and (J) to regulate NO_X as an ozone precursor in North Coast Unified AQMD, which is subject to a narrow PSD FIP addressing this requirement (codified at 40 CFR 52.270(b)(2)(iv)).[59]
- PSD requirement in sections 110(a)(2)(C), (D)(i)(II), and (J) to regulate PSD increments in North Coast Unified AQMD, for which EPA issued a finding of failure to submit that triggered an October 6, 2016 deadline for EPA to promulgate a FIP addressing this requirement.[60]

The provisions for which our FIP obligation is overdue include:

- Ambient air monitoring requirement in section 110(a)(2)(B) with respect to the 2008 ozone NAAQS in the Bakersfield MSA, whose FIP deadline expired on February 14, 2015.
- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 2008 ozone NAAQS in the Mountain Counties AQCR (for El Dorado County APCD only), whose FIP deadline expired on February 14, 2015.
- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 1997 $PM_{2.5}$ NAAQS in the San Joaquin Valley AQCR, whose FIP deadline expired on November 21, 2010.

For the remaining partial disapprovals, EPA has not previously promulgated a FIP to address the identified deficiency or triggered a FIP deadline by disapproving a prior SIP submittal or issuing a finding of failure to submit based on the same deficiency. Thus, under CAA section 110(c)(1), these remaining partial disapprovals of California's Infrastructure SIP Submittals require EPA to promulgate a FIP within two years after the effective date of this final rule, unless the State submits and EPA approves a SIP revision that corrects the identified deficiencies prior to the expiration of this two-year period. The provisions for which our partial disapprovals trigger a new FIP obligation include:

- Ambient air monitoring requirement in section 110(a)(2)(B) with respect to the 1997 ozone NAAQS in the Bakersfield MSA.

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[57] 73 FR 62902 at 62905, October 22, 2008. Note that we also found that California had failed to submit SIP revisions for some air districts addressing the PSD-related requirements of CAA section 110(a)(2)(C) and (J). However, such failure to submit did not trigger a FIP deadline since those air districts were already subject to the PSD FIP in 40 CFR 52.21. For the 1997 ozone NAAQS, EPA found that California had failed to submit SIP revisions for some air districts addressing the PSD-related requirements of CAA section 110(a)(2)(C). 73 FR 16205 at 16208, March 27, 2008. However, similar to EPA's findings on the 1997 $PM_{2.5}$ NAAQS, such failure to submit did not trigger a FIP deadline since those air districts were already subject to the PSD FIP in 40 CFR 52.21.

[58] 78 FR 2882 at 2889, January 15, 2013. Note that we did not make completeness findings or findings of failure to submit with respect to CAA sections 110(a)(2)(C) (to the extent it refers to permit programs required under part D of title I of the CAA (nonattainment NSR)), section 110(a)(2)(D)(i)(I) (pertaining to two of several interstate transport requirements), or section 110(a)(2)(I), (pertaining to the nonattainment planning).

[59] 76 FR 48006, August 8, 2011.

[60] 79 FR 51913, September 2, 2014.

- PSD requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) to regulate PM$_{2.5}$, PM$_{2.5}$ precursors, and condensable PM$_{2.5}$ in North Coast Unified AQMD.
- PSD requirement in sections 110(a)(2)(C), (D)(i)(II), and (J) for a baseline date for PSD increments for PM$_{2.5}$ in Mendocino County APCD and Northern Sonoma County APCD.
- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 1997 ozone NAAQS in the Mountain Counties AQCR (for El Dorado County APCD only).
- Emergency episode planning requirement in section 110(a)(2)(G) with respect to the 2006 PM$_{2.5}$ and 2012 PM$_{2.5}$ NAAQS in the San Joaquin Valley AQCR.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of five state provisions from the California Government Code statutes and California Code of Regulations for the conflict of interest requirements of CAA sections 110(a)(2)(E)(ii) and 128. These provisions include California Government Code, Title 9, Sections 82048 (last amended in 2004), 87103 (last amended in 2000), and 87302 (last amended in 1992), and California Code of Regulations, Title 2, Sections 18700 (last amendment filed on December 20, 2005) and 18701 (last amendment filed on December 29, 2005). Similarly, EPA is also finalizing the incorporation by reference of Great Basin Unified Air Pollution Control District (APCD) Rule 701, adopted on March 3, 2014, with respect to the 1987 p.m.$_{10}$, 1997 PM$_{2.5}$, 2006 PM$_{2.5}$, and 2012 PM$_{2.5}$ NAAQS for the emergency episode planning requirements of CAA section 110(a)(2)(G) and 40 CFR part 51, subpart H. The incorporation by reference of the five state provisions and the one Great Basin Unified APCD provision are described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the partial approval and partial disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action approves certain pre-existing requirements, and disapproves certain other pre-existing requirements, under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR

67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This partial approval and partial disapproval under CAA section 110 will not in-and-of itself create any new regulations but simply approves certain State requirements, and disapproves certain other State requirements, for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on May 2, 2016.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Sulfur dioxide.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 24, 2015.

Jared Blumenfeld,

Regional Administrator, U.S. EPA, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(386)(ii)(A)(5), (c)(466), (467), (468), and (469) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(386) * * *

(ii) * * *

(A) * * *

(5) "110(a)(2) Infrastructure SIP," submitted as Appendix B to the 2007 State Strategy, and "Legal Authority and Other Requirements," submitted as Appendix G to the 2007 State Strategy (collectively, "2007 Infrastructure SIP").

* * * * *

(466) The following plan was submitted on October 6, 2011, by the Governor's Designee.

(i) [Reserved].

(ii) Additional materials.

(A) California Air Resources Board (CARB).

(1) CARB Resolution 11–28, dated September 22, 2011, adopting the "Proposed State Implementation Plan Revision for Federal Lead Standard Infrastructure Requirements."

(2) "Proposed State Implementation Plan Revision for Federal Lead Standard

Infrastructure Requirements," ("2011 Pb Infrastructure SIP").

(467) The following plan was submitted on December 12, 2012, by the Governor's Designee.

(i) [Reserved].

(ii) Additional materials.

(A) California Air Resources Board (CARB).

(*1*) CARB Resolution 12–32, dated November 15, 2012, adopting the "Proposed State Implementation Plan Revision for Federal Nitrogen Dioxide Standard Infrastructure Requirements."

(*2*) "Proposed State Implementation Plan Revision for Federal Nitrogen Dioxide Standard Infrastructure Requirements," ("2012 NO_2 Infrastructure SIP").

(468) The following plan was submitted on March 6, 2014, by the Governor's Designee.

(i) Incorporation by Reference.

(A) California Air Resources Board

(*1*) California Government Code, Title 9 (Political Reform), Chapter 2 (Definitions), Section 82048, "Public official," added by California Initiative Measure approved on June 4, 1974, effective January 7, 1975, and last amended in 2004.

(*2*) California Government Code, Title 9 (Political Reform), Chapter 7 (Conflicts of Interest), Article 1 (General Prohibition), Section 87103, "Financial interest in decision by public official," added by California Initiative Measure approved on June 4, 1974, effective January 7, 1975, and last amended in 2000.

(*3*) California Government Code, Title 9 (Political Reform), Chapter 7 (Conflicts of Interest), Article 3 (Conflict of Interest Codes), Section 87302, "Required provisions; exemptions," added by California Initiative Measure approved on June 4, 1974, effective January 7, 1975, and last amended in 1992.

(*4*) Title 2, California Code of Regulations, Division 6 (Fair Political Practices Commission), Chapter 7 (Conflict of Interest), Article 1 (Conflicts of Interest; General Prohibition), Section 18700, "Basic Rule and Guide to Conflict of Interest Regulations" (filed on December 17, 1976, effective upon filing, and last amendment filed on December 20, 2005, operative January 19, 2006).

(*5*) Title 2, California Code of Regulations, Division 6 (Fair Political Practices Commission), Chapter 7 (Conflict of Interest), Article 1 (Conflicts of Interest; General Prohibition), Section 18701, "Definitions: Source of Income, Commission Income and Incentive Income" (filed on January 22, 1976, effective February 21, 1976, and last amendment filed on December 29, 2005, operative January 28, 2006).

(ii) Additional materials.

(A) California Air Resources Board (CARB).

(*1*) CARB Resolution 14–1, dated January 23, 2014, adopting the "California Infrastructure SIP."

(*2*) "California Infrastructure SIP," ("2014 Multi-pollutant Infrastructure SIP").

(469) The following plan was submitted on June 2, 2014, by the Governor's Designee.

(i) Incorporation by Reference.

(A) Great Basin Unified Air Pollution Control District.

(*1*) Rule 701, "Air Pollution Episode Plan for Particulate Matter," adopted on March 3, 2014.

■ 3. Section 52.221 is revised to read as follows:

§ 52.221 Classification of regions.

The California plan was evaluated on the basis of the following classifications:

Air quality control region	Pollutant				
	Particulate matter	Sulfur oxides	Nitrogen dioxide	Carbon monoxide	Photochemical oxidants (hydrocarbons)
Great Basin Valley Intrastate	I	III	III	III	III
Lake County Intrastate	II	III	III	III	III
Lake Tahoe Intrastate	II	III	III	I	III
Metropolitan Los Angeles Intrastate	I	III	III	I	I
Mountain Counties Intrastate	II	III	III	I	I
North Central Coast Intrastate	II	III	III	III	III
North Coast Intrastate	II	III	III	III	III
Northeast Plateau Intrastate	III	III	III	III	III
Sacramento Valley Intrastate	II	III	III	I	I
San Diego Intrastate	II	III	III	I	I
San Francisco Bay Area Intrastate	II	III	III	I	I
San Joaquin Valley Intrastate	II	III	III	I	I
South Central Coast Intrastate	III	III	III	III	III
Southeast Desert Intrastate	I	III	III	III	I

■ 4. Section 52.223 is amended by adding paragraphs (i) thru (o) to read as follows:

§ 52.223 Approval status.

* * * * *

(i) *1997 ozone NAAQS:* The 2007 Infrastructure SIP, submitted on November 16, 2007, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, are partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 1997 8-hour ozone NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) San Joaquin Valley APCD (Bakersfield Metropolitan Statistical Area (MSA), only) for section 110(a)(2)(B).

(2) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) North Coast Unified AQMD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections

110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(6) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(7) Mountain Counties AQCR (El Dorado County, only) for section 110(a)(2)(G).

(j) *1997 $PM_{2.5}$ NAAQS:* The 2007 Infrastructure SIP, submitted on November 16, 2007, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, are partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(6) San Joaquin Valley Mountain Counties AQCR for section 110(a)(2)(G).

(k) *2006 $PM_{2.5}$ NAAQS* and *2012 $PM_{2.5}$ NAAQS:* The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, is partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2006 $PM_{2.5}$ NAAQS and 2012 $PM_{2.5}$ NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(6) San Joaquin Valley Mountain Counties AQCR for section 110(a)(2)(G).

(l) *2008 ozone NAAQS:* The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, is partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2008 8-hour ozone NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) San Joaquin Valley APCD (Bakersfield Metropolitan Statistical Area (MSA), only) for section 110(a)(2)(B).

(2) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) North Coast Unified AQMD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ PSD, and NO_X as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(6) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(7) Mountain Counties AQCR (El Dorado County, only) for section 110(a)(2)(G).

(m) *2008 Pb NAAQS:* The 2011 Pb Infrastructure SIP, submitted on September 22, 2011, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, are partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2008 Pb NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(n) *2010 NO_2 NAAQS:* The 2012 NO_2 Infrastructure SIP, submitted on November 15, 2012, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, are partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2010 NO_2 NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

(o) *2010 SO_2 NAAQS:* The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, is partially disapproved for specific requirements of Clean Air Act section 110(a)(2) for the 2010 SO_2 NAAQS for the Air Pollution Control Districts (APCDs), Air Quality Management Districts (AQMDs), or Air Quality Control Regions (AQCRs) listed in this paragraph.

(1) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(2) North Coast Unified AQMD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(3) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only) for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J).

(4) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality, only), and (J), except for South Coast AQMD where the Federal PSD program applies to greenhouse gases, only.

(5) All areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270 for sections 110(a)(2)(D)(ii) (with respect to section 126(a), only).

§ 52.225 [Amended]

■ 5. Section 52.225 is amended by removing and reserving paragraph (a).

■ 6. Section 52.283 is amended by adding paragraphs (c) thru (g) to read as follows:

§ 52.283 Interstate Transport.

* * * * *

(c) *2006 $PM_{2.5}$ NAAQS* and *2012 $PM_{2.5}$ NAAQS:* The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS and 2012 $PM_{2.5}$ NAAQS.

(1) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state's measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the "California Regional Haze Plan," adopted January 22, 2009.

(d) *2008 ozone NAAQS:* The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2008 ozone NAAQS.

(1) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state's measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the

"California Regional Haze Plan," adopted January 22, 2009.

(e) *2008 Pb NAAQS:* The 2011 Pb Infrastructure SIP, submitted on September 22, 2011, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2008 Pb NAAQS.

(1) The requirements of CAA section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment of the 2008 Pb NAAQS in any other State and interference with maintenance of the 2008 Pb NAAQS by any other State.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state's measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(3) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the "California Regional Haze Plan," adopted January 22, 2009.

(f) *2010 NO_2 NAAQS:* The 2012 NO_2 Infrastructure SIP, submitted on November 15, 2012, and the 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2010 NO_2 NAAQS.

(1) The requirements of CAA section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment of the 2010 NO_2 NAAQS in any other State and interference with maintenance of the 2010 NO_2 NAAQS by any other State.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state's measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(3) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the "California Regional Haze Plan," adopted January 22, 2009.

(g) *2010 SO_2 NAAQS:* The 2014 Multi-pollutant Infrastructure SIP, submitted on March 6, 2014, and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 2010 SO_2 NAAQS.

(1) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with any other state's measures required under title I, part C of the Clean Air Act to prevent significant deterioration of air quality, except that these requirements are not fully met in the Air Pollution Control Districts (APCDs) or Air Quality Management Districts (AQMDs) listed in this paragraph.

(i) Mendocino County AQMD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(ii) North Coast APCD (PSD requirements for the regulation of $PM_{2.5}$, $PM_{2.5}$ precursors, condensable $PM_{2.5}$, $PM_{2.5}$ increments, and NO_X as an ozone precursor, only)

(iii) Northern Sonoma County APCD (PSD requirements for a baseline date for $PM_{2.5}$ increments, only)

(iv) South Coast AQMD (PSD requirements for the NAAQS, only).

(v) All other areas in California that are subject to the Federal PSD program as provided in 40 CFR 52.270.

(2) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the "California Regional Haze Plan," adopted January 22, 2009.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2015–0158; FF09M21200–156–FXMB1231099BPP0]

RIN 1018–BB10

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2016 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2016 season. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that will go into effect on April 2, 2016, and expire on August 31, 2016.

DATES: The amendments to subpart D of 50 CFR part 92 are effective April 2, 2016, through August 31, 2016. The amendments to subparts A and C of 50 CFR part 92 are effective May 2, 2016.

FOR FURTHER INFORMATION CONTACT: Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786–3499.

SUPPLEMENTARY INFORMATION:

Why is this rulemaking necessary?

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This rule establishes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2016. This rule also sets forth a list of migratory bird season openings and closures in Alaska by region.

How do I find the history of these regulations?

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, were originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on February 23, 2015 (80 FR 9392).

Recent **Federal Register** documents and all final rules setting forth the annual harvest regulations are available at *http://www.fws.gov/alaska/ambcc/regulations.htm* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

What is the process for issuing regulations for the subsistence harvest of migratory birds in Alaska?

The U.S. Fish and Wildlife Service (Service or we) is establishing migratory bird subsistence harvest regulations in Alaska for the 2016 season. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

We opened the process to establish regulations for the 2016 spring and summer subsistence harvest of migratory birds in Alaska in a proposed rule published in the **Federal Register** on April 13, 2015 (80 FR 19852), to amend 50 CFR part 20. While that proposed rule primarily addressed the regulatory process for hunting migratory birds for all purposes throughout the United States, we also discussed the background and history of Alaska subsistence regulations, explained the annual process for their establishment, and requested proposals for the 2016 season. The rulemaking processes for both types of migratory bird harvest are related, and the April 13, 2015, proposed rule explained the connection between the two.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 8–9, 2015, to develop recommendations for changes that would take effect during the 2016 harvest season. The Co-management Council also amended the consent agenda package of carry-over regulations to request a limited emperor goose harvest for 2016; these recommended changes were presented first to the Pacific Flyway Council and then to the Service Regulations Committee (SRC) for approval at the committee's meeting on July 31, 2015.

On December 17, 2015, we published in the **Federal Register** a proposed rule (80 FR 78950) to amend 50 CFR part 92 to establish regulations for the 2016 spring and summer subsistence harvest of migratory birds in Alaska at subpart D, and to make certain changes to the permanent regulations at subparts A and C.

Who is eligible to hunt under these regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. High-populated, roaded areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459, based on the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

In 2012, we received a request from the Native Village of Eyak to include Cordova, Alaska, for a limited season that would legalize the traditional gathering of gull eggs and the hunting of waterfowl during spring. This request resulted in a new, limited harvest of spring waterfowl and gull eggs starting in 2014.

What is different in the regulations for 2016?

Subpart A

Under subpart A, General Provisions, we are amending § 92.4 by adding a new definition for "Edible meat" and revising the definition for "Nonwasteful taking." These changes were requested in 2014, by the Bristol Bay Regional Council, which recommended that all edible parts of migratory waterfowl must be salvaged when harvested. The topic was originally brought up by the Association of Village Council Presidents after an incident in their region where tundra swans were only breasted and the remainder of the bird was discarded. The concern was that "indigenous inhabitants" harvesters come from a variety of different cultures, and it was expressed that subsistence should involve retaining the whole bird for food and other uses.

Subpart C

Under subpart C, General Regulations Governing Subsistence Harvest, we are amending § 92.22, the list of birds open to subsistence harvest, by updating scientific names for six species and clarifying the nomenclature for Canada goose subspecies. These nomenclature updates come from the Service and the Alaska Department of Fish and Game.

Subpart D

The regulations we are establishing for subpart D, Annual Regulations Governing Subsistence Harvest, are the same as the 2015 regulations. While we are not establishing any changes to the 2015 regulations for subpart D in this 2016 rule, we provide information below on potential changes to the regulations for this subpart in the 2017 migratory bird subsistence harvest regulations in Alaska.

The Co-management Council proposed a new emperor goose (*Chen canagica*) limited subsistence hunt for the 2016 season. Since 2012, the Co-management Council has received regulatory proposals from the Sun'aq Tribe of Kodiak, the Kodiak-Aleutians

Subsistence Regional Advisory Council, the Yaquillrit Keutisti Council (Bristol Bay), and the Bering Strait/Norton Sound Migratory Bird Council (Kawerak) to open the harvest of emperor geese for the subsistence season. Since the hunting season has been closed since 1987 for emperor geese, the Co-management Council created a subcommittee to address these proposals. The emperor goose harvest is guided by the 2006 Pacific Flyway Management Plan and the 2005–2006 Yukon-Kuskokwim Delta Goose Management Plan. Over 95 percent of the emperor goose population breeds on the Yukon-Kuskowim Delta of Alaska, and most emperor geese winter in remote western Alaska with the remainder wintering in Russia. The Pacific Flyway Council recognizes the 3-year average abundance estimate derived from the emperor goose spring population survey on the Alaska Peninsula as the management index to guide harvest management decisions. The Pacific Flyway Council's Emperor Goose Management Plan and the Yukon-Kuskokwim Delta Goose Management Plan indicate that a harvest can be considered when the 3-year average abundance index is at least 80,000 birds. This threshold has not been reached since 1984, and Alaska Natives have questioned the survey methods used to determine the population index.

In addition, two studies are being conducted concurrently by the Service and the Alaska Department of Fish and Game. The first study is designed to provide a comprehensive evaluation of all available emperor goose survey data and assess harvest potential of the population. The second study is designed to develop a Bayesian state space population model to improve estimates of population size by integrating current population assessment methods using all available data sets. The model provides a framework from which to make inferences about survival rates, age structure, and population size. The results of these studies will assist in amending the management plans.

The Service conducted the spring emperor goose survey April 25–28, 2015, and results indicated that the 2015 spring index (98,155) was 23 percent above the 2014 count (79,883), and 49 percent higher than the long-term (1981–2014) average (65,923). The most recent 3-year average count (2012, 2014, 2015) is 81,875 geese and the highest on record since 1984. Further, it is above the threshold for consideration of an open hunting season on emperor geese as specified in the Yukon-Kuskokwim Delta Goose Management Plan and the Pacific Flyway Council Management Plan for emperor geese.

As a result of this new information, the Co-management Council amended their motion of the consent agenda to add an allowance for a limited emperor goose harvest in 2016. The Pacific Flyway Council met in July 2015, and supported the Co-management Council's recommendation to work with the State of Alaska and the Service to develop harvest regulations and monitoring for a limited emperor goose harvest in 2016. On July 31, 2015, the SRC supported the Co-management Council's proposed limited harvest of emperor geese for the 2016 Alaska spring and summer subsistence season. However, the approval was provisional based upon the following:

(1) A limited harvest of 3,500 emperor geese to ensure that population growth continues toward the Flyway management plan objective;

(2) A harvest allocation (*e.g.,* an individual, family, or Village quota or permit hunt) that ensures harvest does not exceed 3,500;

(3) Agreement on a monitoring program to index abundance of the emperor goose population; and

(4) A revised Pacific Flyway Emperor Goose Management Plan, including harvest allocation among all parties (including spring/summer and fall/winter), population objective, population monitoring, and thresholds for season restriction or closure.

The harvest allocation design and harvest monitoring plan are to be completed by November 1, 2016. Additionally, there was an explicit statement that the limited, legalized harvest of 3,500 birds was not in addition to existing subsistence harvest (approximately 3,200 emperor geese). The 3,500-bird allowable harvest is to be allocated to subsistence users during the spring and summer subsistence season. The SRC suggested that the allowable harvest should be monitored to ensure it does not exceed 3,500 birds.

On August 13–14, and September 21, 2015, the Co-management Council Native Caucus met separately and with all partners to discuss options available to limit and monitor the harvest, as well as options to allocate the 3,500 birds across the six regions where emperor geese occur. Given the limited time provided to address the four conditions placed on this new harvest by the SRC, all partners agreed that the best course of action would be to spend additional time working together to develop a culturally sensitive framework tailored to each participating region that conserves the population and adequately addresses the data needs of all partners. In support of this recommendation, the Co-management Council took action to: Postpone an emperor goose harvest until 2017; work with all partners to develop the harvest framework; and work with their Emperor Goose Subcommittee and the Pacific Flyway Council on updating the Pacific Flyway Emperor Goose Management Plan.

How will the Service ensure that the subsistence harvest will not raise overall migratory bird harvest or threaten the conservation of endangered and threatened species?

We have monitored subsistence harvest for the past 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Spectacled and Steller's Eiders

Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species have been taken in several regions of Alaska.

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, provided that regulations continue to protect threatened species, measures to address documented threats are implemented, and the subsistence community and other conservation partners commit to working together. With these dual objectives in mind, the Service, working with North Slope partners, developed measures in 2009, to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; and (2) continued enforcement of the migratory bird regulations that are protective of listed eiders.

This final rule continues to focus on the North Slope from Barrow to Point

Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there. These regulations are designed to address several ongoing eider management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any species of bird closed to harvest. This rule also describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. We are always willing to discuss regulations with our partners on the North Slope to ensure protection of closed species as well as provide subsistence hunters an opportunity to harvest migratory birds in a way that maintains the culture and traditional harvest of the community. The regulations pertaining to bag checks and possession of illegal birds are deemed necessary to monitor the number of closed eider species taken during the subsistence hunt.

The Service is aware of and appreciates the considerable efforts by North Slope partners to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. We also recognize that no listed eiders have been documented shot from 2009 through 2012; however, one Steller's eider and one spectacled eider were found shot during the summer of 2013, and one Steller's eider was found shot in 2014. In 2015, one spectacled eider was found dead, and it appeared to have been shot by a hunter. The Service acknowledges progress made with the other eider conservation measures, including partnering with the North Slope Migratory Bird Task Force, for increased waterfowl hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. To reduce the threat of shooting mortality of threatened eiders, we continue to work with North Slope partners to conduct education and outreach. In addition, the emergency closure authority provides another level of assurance if an unexpected number of Steller's eiders are killed by shooting (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest monitoring information will be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. Conservation measures are being continued by the Service, with the amount of effort and emphasis being based on regulatory adherence.

The longstanding general emergency closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the regulations at 50 CFR 92.32, carried over from the past 5 years, clarify that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. When and if mortality of threatened eiders is documented, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to "review other programs administered by him and utilize such programs in furtherance of the purposes of the Act" and to "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. * * *" We conducted an intra-agency consultation with the Service's Fairbanks Fish and Wildlife Field Office on this harvest as it will be managed in accordance with this final rule and the conservation measures. The consultation was completed with a biological opinion dated December 18, 2015, that concluded the final rule and conservation measures are not likely to jeopardize the continued existence of Steller's and spectacled eiders or result in the destruction or adverse modification of designated critical habitat.

Summary of Public Involvement

On December 17, 2015, we published in the **Federal Register** a proposed rule (80 FR 78950) to establish spring and summer migratory bird subsistence harvest regulations in Alaska for the 2016 subsistence season. The proposed rule provided for a public comment period of 60 days, ending February 16, 2016. We posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Co-management Council's Internet homepage. We issued a press release announcing our request for public comments and the pertinent deadlines for such comments, which was faxed to the media Statewide in Alaska. Additionally, all documents were available on *http://www.regulations.gov.* The Service received two responses from the public.

Response to Public Comments

Comment: We received one comment on the overall regulations that expressed strong opposition to the concept of allowing any harvest of migratory birds in Alaska.

Service Response: For centuries, indigenous inhabitants of Alaska have harvested migratory birds for subsistence purposes during the spring and summer months. The Canada and Mexico migratory bird treaties were amended for the express purpose of allowing subsistence hunting for migratory birds during the spring and summer. The amendments indicate that the Service should issue regulations allowing such hunting as provided in the Migratory Bird Treaty Act; see 16 U.S.C. 712(1). Please refer to Statutory Authority section, below, for more details.

Comment: We received one comment encouraging the use of steel shot in rural Alaska.

Service Response: These subsistence regulations have prohibited the possession and use of non-toxic shot since the program's inception in 2003. This has been a target of both outreach and enforcement through the years.

Comment: We received one comment requesting the reinstatement of a mandatory Federal Migratory Bird Hunting and Conservation Stamp ("Duck Stamp") for hunters over 12 or 16 years of age.

Service Response: On December 18, 2014, President Obama signed into law the Federal Duck Stamp Act of 2014 (Pub. L. 113–264). The Federal Duck Stamp Act of 2014 amends the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718a–718k, as amended) by, among other things, adding an exemption from the requirement to purchase a Duck Stamp for rural Alaska subsistence users. Specifically, the Federal Duck Stamp Act of 2014 states that purchase of a Duck Stamp is not required "by a rural Alaska resident for subsistence uses (as that term is defined in section 803 of the Alaska National Interest Lands Conservation Act [ANILCA] (16 U.S.C. 3113))." ANILCA (Pub. L. 96–487, 94 Stat. 2371) is codified, as amended, at 16 U.S.C. 410hh–3233 and 43 U.S.C. 1602–1784. To remove this exemption would require another congressional action.

Comment: We received one comment encouraging more hunter education classes in rural areas.

Service Response: Hunter education classes are coordinated and conducted by the Alaska Department of Fish and Game.

Comment: We received one comment saying we should encourage proper cooking and cleaning procedures and storage of harvested birds.

Service Response: The annual public regulations booklet for the subsistence spring/summer migratory bird harvest has a special section on the last page dedicated to just these topics.

Comment: We received one comment saying we should attempt to minimize use of trail vehicles and motorized equipment during the nesting season.

Service Response: Access to nesting areas is dictated by the local land owner or manager. In the case of national wildlife refuges, contact the appropriate Service refuge office directly to discuss access issues.

Comment: We received one comment saying that local populations of sea ducks as well as geese should be more protected.

Service Response: Following declines from the 1960s to the 1980s, most sea duck and other waterfowl populations have stabilized. For example, the 2015 Environmental Assessment found that common eiders have increased since the mid-1990s, while king eiders have stabilized since 1996. Factors driving population fluctuations in sea duck populations are uncertain, but there is some evidence that sea ducks are responding to large scale changes in the marine environment. Harvested goose populations are all generally high or over management objectives. Total annual and long-term subsistence and sport harvest of waterfowl in Alaska and the Pacific Flyway are low relative to the size of their continental populations. In general, we do not set regulations to address waterfowl populations on a local scale because sport and subsistence harvest estimates and estimates of species abundance are very imprecise at local scales. We set subsistence harvest regulations on a regional or statewide level based on species or subspecies continental population status. We would welcome any suggestions on how to make our regulations more effective in conserving local populations of hunted birds.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

Effective Date of This Rule

The amendments to subpart D of 50 CFR part 92 will take effect less than 30 days after publication (see DATES, above). If there was a delay in the effective date of these regulations after this final rulemaking, subsistence hunters would not be able to take full advantage of their subsistence hunting opportunities. We therefore find that "good cause" exists justifying the earlier start date, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–712).

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that, if adopted, this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This final rule would legalize a pre-existing subsistence activity, and the resources harvested will be consumed.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more. It legalizes and regulates a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that will be regulated under this final rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this final rule will derive from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this final rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This final rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This final rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this final rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The final rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game also incurs expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this final rule will not have significant takings implications. This final rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this final rule on the State of Alaska in the *Unfunded Mandates Reform Act* section, above. We worked with the State of Alaska to develop these final regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this final rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), "Consultation and Coordination with Indian Tribal Governments", and Department of Interior policy on Consultation with Indian Tribes (December 1, 2011), in January 2016, we sent letters via electronic mail to all 229 Alaska Federally recognized Indian tribes. Consistent with Congressional direction (Pub. L. 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we also sent letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the 2016 migratory bird subsistence harvest regulations. We received one response that requested consultation. We conducted one consultation with a Native Traditional Council on February 16, 2016. The tribal contacts were happy with the information provided and did not have any specific comments on the regulations.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: Seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

Paperwork Reduction Act of 1995 (PRA)

This final rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved our collection of information associated with:

- Voluntary annual household surveys that we use to determine levels of subsistence take (OMB Control Number 1018–0124, expires June 30, 2016).
- Permits associated with subsistence hunting (OMB Control Number 1018–0075, expires April 30, 2016).

National Environmental Policy Act Consideration (42 U.S.C. 4321 et seq.)

The annual regulations and options are considered in an October 2016 environmental assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2016 Spring/Summer Harvest," dated October 9, 2015. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it would allow only for traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this final rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and a Statement of Energy Effects is not required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

■ 2. Amend § 92.4 by adding, in alphabetical order, a definition for "*Edible meat*" and revising the definition for "*Nonwasteful taking*" to read as follows:

§ 92.4 Definitions.

* * * * *

Edible meat means the meat from the breast, back, thighs, legs, wings, gizzard, and heart. The head, neck, feet, other internal organs, and skin are considered inedible byproducts, and not edible meat, for all provisions of this part.

* * * * *

Nonwasteful taking means making a reasonable effort to retrieve all birds killed or wounded, and retaining all edible meat until the birds have been transported to the location where they will be consumed, processed, or preserved as human food.

* * * * *

Subpart C—General Regulations Governing Subsistence Harvest

■ 3. Amend § 92.22 by:
■ a. Revising paragraph (a)(3);
■ b. Removing and reserving paragraph (a)(4); and
■ c. Revising paragraphs (a)(5) and (6), (i)(3), (13), and (15), (j)(4) and (15), and (l)(2).

The revisions read as follows:

§ 92.22 Subsistence migratory bird species.

* * * * *

(a) * * *

(3) Canada goose (*Branta canadensis*).

* * * * *

(5) Canada goose, subspecies Aleutian goose—except in the Semidi Islands.

(6) Canada goose, subspecies cackling goose—except no egg gathering is permitted.

* * * * *

(i) * * *

(3) Spotted sandpiper (*Actitis macularius*).

* * * * *

(13) Wilson's snipe (*Gallinago delicata*).

* * * * *

(15) Red phalarope (*Phalaropus fulicarius*).

* * * * *

(j) * * *

(4) Bonaparte's gull (*Chroicocephalus philadelphia*).

* * * * *

(15) Aleutian tern (*Onychoprion aleuticus*).

* * * * *

(l) * * *

(2) Snowy owl (*Bubo scandiacus*).

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 4. Amend subpart D by adding § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2016 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.* (1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleutian Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in Game Management Units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.* (1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) *Bristol Bay Region.* (1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region.* (1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region,* except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Marine waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region.* (1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region.* (1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°3′ W. and south of the latitude line 70°45′ N. to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′ N. between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area consists of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30′ W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30′ W. and north of the latitude line 70°45′ N. to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′ N. between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: Yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region inadvertently entangled in subsistence fishing nets in the North Slope Region may be kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subparts C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.* (1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Game Management Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.* (1) Prince William Sound Area West (Harvest area: Game Management Unit 6[D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Prince William Sound Area East (Harvest area: Game Management Units 6[B] and [C]—Barrier Islands between Strawberry Channel and Softtuk Bar), (Eligible Chugach communities: Cordova):

(i) Season: April 2–April 30 (hunting); May 1–May 31 (gull egg gathering).

(ii) Closure: May 1–August 31 (hunting); April 2–30 and June 1–August 31 (gull egg gathering).

(iii) Species Open for Hunting: Greater white-fronted goose; snow goose; gadwall; Eurasian and American wigeon; blue-winged and green-winged teal; mallard; northern shoveler; northern pintail; canvasback; redhead; ring-necked duck; greater and lesser scaup; king and common eider; harlequin duck; surf, white-winged, and black scoter; long-tailed duck; bufflehead; common and Barrow's goldeneye; hooded, common, and red-breasted merganser; and sandhill crane. Species open for egg gathering: glaucous-winged, herring, and mew gulls.

(iv) Use of Boats/All-Terrain Vehicles: No hunting from motorized vehicles or any form of watercraft.

(v) Special Registration: All hunters or egg gatherers must possess an annual permit, which is available from the Cordova offices of the Native Village of Eyak and the U.S. Forest Service.

(3) Kachemak Bay Area (Harvest area: Game Management Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Game Management Unit 16[B] as specified below) (Eligible communities: Tyonek only):

(1) Season: April 2–May 31—That portion of Game Management Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Game Management Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.* (1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR part 100.3(a)):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: Small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: Glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to and including Dry Bay):

(i) Season: glaucous-winged gull egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 5. Amend subpart D by adding § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders (*Polysticta stelleri,*) the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: March 21, 2016.

Karen Hyun,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–07398 Filed 3–31–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 160127057–6280–02]

RIN 0648–BF60

Pacific Halibut Fisheries; Catch Sharing Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule announces the approval of the Catch Sharing Plan (Plan) for halibut fishing in Area 2A (waters off the U.S. West Coast) with modifications recommended by the Pacific Fishery Management Council (Council), and establishes implementing regulations for 2016. These actions are intended to conserve Pacific halibut, provide angler opportunity where available, and minimize bycatch of overfished groundfish species. The sport fishing management measures in this rule are an additional subsection of the regulations for the International Pacific Halibut Commission (IPHC) published on March 16, 2016.

DATES: This rule is effective April 1, 2016. The 2016 management measures are effective until superseded.

ADDRESSES: Additional requests for information regarding this action may be obtained by contacting the Sustainable Fisheries Division, NMFS West Coast Region, 7600 Sand Point Way, NE., Seattle, WA 98115. For information regarding all halibut fisheries and general regulations not contained in this rule contact the International Pacific Halibut Commission, 2320 W. Commodore Way Suite 300, Seattle, WA 98199–1287; this final rule also is accessible via the Internet at the Federal eRulemaking portal at *http://www.regulations.gov* identified by NOAA–NMFS–2015–0166. Electronic copies of the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained by contacting Sarah Williams, phone: 206–526–4646, email: *sarah.williams@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Williams, 206–526–4646, email at *sarah.williams@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html.* Background information and documents are available at the NMFS West Coast Region Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html* and at the Council's Web site at *http://www.pcouncil.org.*

Background

The IPHC has promulgated regulations governing the Pacific halibut fishery in 2016, pursuant to the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). Pursuant to the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773b, the Secretary of State accepted the 2016 IPHC regulations as provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773–773k. NMFS published these regulations on March 16, 2016 (81 FR 14000).

The Halibut Act provides that the Regional Fishery Management Councils may develop, and the Secretary may implement, regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with, approved IPHC regulations. To that end, since 1988 the Council and NMFS have managed the halibut fisheries in Area 2A, which is off the coasts of Washington, Oregon, and California, through a Catch Sharing Plan (Plan). The Plan allocates the Area 2A Total Allowable Catch (TAC), which is set by the IPHC, among treaty Indian and non-Indian commercial and sport harvesters. The treaty Indian fisheries include tribal commercial, tribal ceremonial, and subsistence fisheries. Between 1988 and 1995, the Council developed and NMFS implemented annual catch sharing plans for Area 2A. In 1995, NMFS implemented the Council-recommended long-term Plan (60 FR 14651, March 20, 1995). Every year since then, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. These revisions are not codified.

NMFS implements the allocation framework in the Plan through annual regulations for Area 2A. The proposed rule describing the changes the Council recommended to the Plan and resulting proposed Area 2A regulations for 2016 was published on February 19, 2016 (81 FR 8466). The IPHC held its annual meeting January 25–29, 2016, and selected a TAC of 1,140,000 pounds for Area 2A.

For 2016, this final rule contains only those regulations implementing the Plan in Area 2A. NMFS published the complete IPHC regulations, which apply to commercial, treaty Indian, and recreational fisheries in addition to this rule, separately on March 16, 2016 (81 FR 14000). Therefore anyone wishing to fish for halibut in Area 2A should read both this final rule and the March 16, 2016 final rule that implements the IPHC regulations.

Changes to the Pacific Fishery Management Council's Area 2A Catch Sharing Plan and Codified Regulations

This final rule announces the approval of several Council-recommended changes to the Pacific Fishery Management Council's Area 2A Plan and implements the Plan through annual management measures. For 2016, the Council recommended minor modifications to sport fisheries to better match the needs of the fishery, updates to the inseason procedures to reflect current practices, and an update to the description of the tribal fishing area. The Council also recommended changes to the codified regulations to remove coordinates that are described in groundfish regulations so that fishers have one location for closed areas coordinates, updates to Tribal fishing areas to account for a recent court order, updates to the description of non-trawl Rockfish Conservation Area to match modifications made through the 2015–2016 groundfish harvest specifications, and minor changes to match the changes to the Plan.

Incidental Halibut Retention in the Sablefish Primary Fishery North of Pt. Chehalis, Washington, and the Salmon Troll Fishery Along the West Coast

The Plan provides that incidental halibut retention in the sablefish primary fishery north of Pt. Chehalis, Washington, will be allowed when the Area 2A TAC is greater than 900,000 lb (408.2 mt), provided that a minimum of 10,000 lb (4.5 mt) is available above a Washington recreational TAC of 214,100 lb (97.1 mt). In 2016, the TAC is 1,140,000 lb (517.10 mt); therefore, based on the formula set forth in the Plan (any amount of the Washington recreational TAC over 214,000 lbs, up to 70,000 lbs) the allocation for incidental halibut retention in the sablefish fishery is 49,686 lb (22.54 mt). Landing restrictions were recommended by the Council at its March 10–14, 2016, meeting. NMFS will publish the restrictions in the **Federal Register** as an inseason action in the groundfish fishery.

The Plan allocates 15 percent of the non-Indian commercial TAC to the salmon troll fishery in Area 2A. For 2016 the allocation is 34,126 lb (15.48 mt). The Council approved a range of landing restrictions for public review at its recent March meeting. The final landing restrictions will be addressed at the Council's April 2016 meeting and implemented in the annual salmon management measures.

Comments and Responses

NMFS accepted comments on the proposed rule for the Area 2A Plan and annual management measures through March 10, 2016. NMFS received three public comment letters: one comment letter each from the Washington Department of Fish and Wildlife (WDFW), Oregon Department of Fish and Wildlife (ODFW), and California Department of Fish and Wildlife (CDFW) recommending season dates for halibut sport fisheries in each state.

Comment 1: The WDFW held a public meeting following the IPHC's final 2016 TAC decisions to review the results of the recent Puget Sound halibut fishery. Based on input from stakeholders and using a revised site weighting methodology which helps derive catch per unit effort (CPUE) estimations, WDFW recommended a 2016 season that is open 8 days, a reduction from 11 days in 2015. For 2016 WDFW has also recommended managing Puget Sound as one area rather than an Eastern and Western areas as was done in 2015. For the Puget Sound halibut sport fishery, WDFW recommended the following open dates: May 7, 12, 13, 14, 26, 27, 28, and 29.

Response: NMFS believes WDFW's recommended Puget Sound season dates will help keep this area within its quota, while providing for angler enjoyment and participation. Therefore, NMFS implements the dates for this subarea, as stated above, in this final rule.

Comment 2: The ODFW held a public meeting and hosted an online survey following the final TAC decision by the IPHC. Based on public comments received on Oregon halibut fisheries, the ODFW recommended the following days for the spring fishery in the Central Coast subarea, within this subarea's parameters for a Thursday-Saturday season and weeks of adverse tidal conditions skipped: Regular open days May 12, 13, 14; 19, 20, 21; 26, 27, 28; and June 2, 3, 4. Back-up dates in case there is sufficient remaining quota will be June 16, 17, 18; 30, July 1, 2; 14, 15, 16; and 28, 29, 30. For the summer all-depth fishery in this subarea, ODFW recommended following the Plan's parameters of opening the first Friday in August, with open days to occur every other Friday-Saturday, unless modified in-season within the parameters of the Plan. Therefore, pursuant to the Plan, the ODFW recommended the 2016 summer all-depth fishery in Oregon's Central Coast Subarea to occur: August 5, 6; 19, 20; September 2, 3; 16, 17; 30, October 1; 14, 15; 28, 29 or until the total 2016 all-depth catch limit for the subarea is taken.

Response: NMFS believes ODFW's recommended Central Coast season dates will help keep this area within its quota, while providing for angler enjoyment and participation. Therefore, NMFS implements the dates in this final rule.

Comment 3: The CDFW submitted a letter describing the results of their 2015 fishery and recommendations for the 2016 fishery. Based on projected attainment of the subarea allocation, the CDFW recommended the following open days May 1–15; June 1–15; July 1–15, August 1–15; September 1–October 31.

Response: NMFS agrees with CDFW's recommended season dates. These dates will help keep this area within its quota, while providing for angler enjoyment and participation. Therefore, NMFS implements the dates in this final rule.

Changes From the Proposed Rule

On February 19, 2016, NMFS published a proposed rule to modify the Plan and recreational management measures for Area 2A (81 FR 8466). The allocations in the proposed rule are consistent with the final Area 2A TAC of 1,140,000 lb (517.10 mt) and the 2016 Plan as recommended by the Council. The only substantive change from the proposed rule is that season dates as recommended by the states following their stakeholder meetings are included in the final rule.

Annual Halibut Management Measures

The sport fishing regulations for Area 2A, included in section 26 below, are consistent with the measures adopted by the IPHC and approved by the Secretary of State, but were developed by the Pacific Fishery Management Council and promulgated by the United States under the Halibut Act. Section 26 refers to a section that is in addition to and corresponds to the numbering in the IPHC regulations published on March 16, 2016 (81 FR 14000).

26. Sport Fishing for Halibut—Area 2A

(1) The total allowable catch of halibut shall be limited to:

(a) 214,110 pounds (97.1 metric tons) net weight in waters off Washington;

(b) 220,077 pounds (99.8 metric tons) net weight in waters off Oregon; and

(c) 29,640 pounds (13.4 metric tons) net weight in waters off California.

(2) The Commission shall determine and announce closing dates to the public for any area in which the catch limits promulgated by NMFS are estimated to have been taken.

(3) When the Commission has determined that a subquota under paragraph (8) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(4) In California, Oregon, or Washington, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(5) The possession limit on a vessel for halibut in the waters off the coast of Washington is the same as the daily bag limit. The possession limit on land in Washington for halibut caught in U.S. waters off the coast of Washington is two halibut.

(6) The possession limit on a vessel for halibut caught in the waters off the coast of Oregon is the same as the daily bag limit. The possession limit for halibut on land in Oregon is three daily bag limits.

(7) The possession limit on a vessel for halibut caught in the waters off the coast of California is one halibut. The possession limit for halibut on land in California is one halibut.

(8) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the in-season actions in 50 CFR 300.63(c). All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(a) The area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17.30′ N. lat., 124°23.70′ W. long. north to 48°24.10′ N. lat., 124°23.70′ W. long., is not managed in-season relative to its quota. This area is managed by setting a season that is projected to result in a catch of 57,393 lb (26.03 mt).

(i) The fishing season in Puget Sound is May 7, 12, 13, 14, 26, 27, 28, and 29.

(ii) The daily bag limit is one halibut of any size per day per person.

(b) The quota for landings into ports in the area off the north Washington coast, west of the line described in paragraph (2)(a) of section 26 and north of the Queets River (47°31.70′ N. lat.) (North Coast subarea), is 108,030 lb (49 mt).

(i) The fishing seasons are:

(A) Fishing is open May 7, 12, and 14. Any openings after May 14 will be based on available quota and announced on the NMFS hotline.

(B) If sufficient quota remains the fishery will reopen until there is not sufficient quota for another full day of fishing and the area is closed by the Commission. After May 14, any fishery opening will be announced on the NMFS hotline at 800–662–9825. No halibut fishing will be allowed after May 14 unless the date is announced on the NMFS hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Recreational fishing for groundfish and halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is a C-shaped area off the northern Washington coast intended to protect yelloweye rockfish. The North Coast Recreational YRCA is defined in groundfish regulations at § 660.70(a).

(c) The quota for landings into ports in the area between the Queets River, WA (47°31.70′ N. lat.), and Leadbetter Point, WA (46°38.17′ N. lat.) (South Coast subarea), is 42,739 lb (19.39 mt).

(i) This subarea is divided between the all-waters fishery (the Washington South coast primary fishery), and the incidental nearshore fishery in the area from 47°31.70′ N. lat. south to 46°58.00′ N. lat. and east of a boundary line approximating the 30 fm depth contour. This area is defined by straight lines connecting all of the following points in the order stated as described by the following coordinates (the Washington South coast, northern nearshore area):

(1) 47°31.70′ N. lat, 124°37.03′ W. long;
(2) 47°25.67′ N. lat, 124°34.79′ W. long;
(3) 47°12.82′ N. lat, 124°29.12′ W. long;
(4) 46°58.00′ N. lat, 124°24.24′ W. long.

The south coast subarea quota will be allocated as follows: 40,739 lb (18.48 mt) for the primary fishery and 2,000 lb (0.91 mt) for the nearshore fishery. The primary fishery commences on May 1, and continues 2 days a week (Sunday and Tuesday) until May 17. If the primary quota is projected to be obtained sooner than expected, the management closure may occur earlier. Beginning on May 29, the primary fishery will be open at most 2 days per week (Sunday and/or Tuesday) until the quota for the south coast subarea primary fishery is taken and the season is closed by the Commission, or until September 30, whichever is earlier. The fishing season in the nearshore area commences on May 1, and continues 7 days per week. Subsequent to closure of the primary fishery, the nearshore fishery is open 7 days per week, until 42,739 lb (19.39 mt) is projected to be taken by the two fisheries combined and the fishery is closed by the Commission or September 30, whichever is earlier. If the fishery is closed prior to September 30, and there is insufficient quota remaining to reopen the northern nearshore area for another fishing day, then any remaining quota may be transferred in-season to another Washington coastal subarea by NMFS via an update to the recreational halibut hotline.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Seaward of the boundary line approximating the 30-fm depth contour and during days open to the primary fishery, lingcod may be taken, retained and possessed when allowed by groundfish regulations at 50 CFR 660.360, subpart G.

(iv) Recreational fishing for groundfish and halibut is prohibited within the South Coast Recreational YRCA and Westport Offshore YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the South Coast Recreational YRCA and Westport Offshore YRCA. A vessel fishing in the South Coast Recreational YRCA and/or Westport Offshore YRCA may not be in possession of any halibut. Recreational vessels may transit through the South Coast Recreational YRCA and Westport Offshore YRCA with or without halibut on board. The South Coast Recreational YRCA and Westport Offshore YRCA are areas off the southern Washington coast established to protect yelloweye rockfish. The South Coast Recreational YRCA is defined at 50 CFR 660.70(d). The Westport Offshore YRCA is defined at 50 CFR 660.70(e).

(d) The quota for landings into ports in the area between Leadbetter Point, WA (46°38.17′ N. lat.), and Cape Falcon, OR (45°46.00′ N. lat.) (Columbia River subarea), is 11,009 lb (4.99 mt).

(i) This subarea is divided into an all-depth fishery and a nearshore fishery. The nearshore fishery is allocated 500 pounds of the subarea allocation. The nearshore fishery extends from Leadbetter Point (46°38.17′ N. lat., 124°15.88′ W. long.) to the Washington-Oregon Border (46°16.00′ N. lat., 124°15.88′ W. long.) by connecting the following coordinates in Washington 46°38.17′ N. lat., 124°15.88′ W. long. 46°16.00′ N. lat., 124°15.88′ W. long and connecting to the boundary line approximating the 40 fm (73 m) depth contour in Oregon. The nearshore fishery opens May 2, and continues 3 days per week (Monday–Wednesday) until the nearshore allocation is taken, or September 30, whichever is earlier. The all depth fishing season commences on May 1, and continues 4 days a week (Thursday–Sunday) until 10,509 lb (4.77 mt) are estimated to have been taken and the season is closed by the Commission, or September 30, whichever is earlier. Subsequent to this closure, if there is insufficient quota remaining in the Columbia River subarea for another fishing day, then any remaining quota may be transferred inseason to another Washington and/or Oregon subarea by NMFS via an update to the recreational halibut hotline. Any remaining quota would be transferred to each state in proportion to its contribution.

(ii) The daily bag limit is one halibut of any size per day per person.

(iii) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, and flatfish species when allowed by Pacific Coast groundfish regulations, during days open to the all depth fishery only.

(iv) Taking, retaining, possessing, or landing halibut on groundfish trips is only allowed in the nearshore area on days not open to all-depth Pacific halibut fisheries.

(e) The quota for landings into ports in the area off Oregon between Cape Falcon (45°46.00′ N. lat.) and Humbug Mountain (42°40.50′ N. lat.) (Oregon

Central Coast subarea), is 206,410 lb (93.63 mt).

(i) The fishing seasons are:

(A) The first season (the "inside 40-fm" fishery) commences June 1, and continues 7 days a week, in the area shoreward of a boundary line approximating the 40-fm (73-m) depth contour, or until the sub-quota for the central Oregon "inside 40-fm" fishery of 24,769 lb (11.24 mt), or any in-season revised subquota, is estimated to have been taken and the season is closed by the Commission, whichever is earlier. The boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N. lat. and 42°40.50′ N. lat. is defined at § 660.71(k).

(B) The second season (spring season), which is for the "all-depth" fishery, is open May 12, 13, 14; 19, 20, 21; 26, 27, 28; and June 2, 3, 4. Back-up dates will be June 16, 17, 18; 30, July 1, 2; 14, 15, 16; 28, 29, 30. The allocation to the all-depth fishery is 181,641 lb (82.4 mt). If sufficient unharvested quota remains for additional fishing days, the season will re-open. Notice of the re-opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on the re-opening dates unless the date is announced on the NMFS hotline.

(C) If sufficient unharvested quota remains, the third season (summer season), which is for the "all-depth" fishery, will be open August 5, 6; 19, 20; September 2, 3; 16, 17; 30, October 1; 14, 15; 28, 29 or until the combined spring season and summer season quotas in the area between Cape Falcon and Humbug Mountain, OR, are estimated to have been taken and the area is closed by the Commission, or October 31, whichever is earlier. NMFS will announce on the NMFS hotline in July whether the fishery will re-open for the summer season in August. No halibut fishing will be allowed in the summer season fishery unless the dates are announced on the NMFS hotline. Additional fishing days may be opened if sufficient quota remains after the last day of the first scheduled open period. If, after this date, an amount greater than or equal to 60,000 lb (27.2 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, the fishery may re-open every Friday and Saturday, beginning August 6 and ending October 31. If after September 4, an amount greater than or equal to 30,000 lb (13.6 mt) remains in the combined all-depth and inside 40-fm (73-m) quota, and the fishery is not already open every Friday and Saturday, the fishery may re-open every Friday and Saturday, beginning September 9 and 10, and ending October 31. After September 4, the bag limit may be increased to two fish of any size per person, per day. NMFS will announce on the NMFS hotline whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open and what the bag limit is.

(ii) The daily bag limit is one halibut of any size per day per person, unless otherwise specified. NMFS will announce on the NMFS hotline any bag limit changes.

(iii) During days open to all-depth halibut fishing, no Pacific Coast groundfish may be taken and retained, possessed or landed, when halibut are on board the vessel, except sablefish, Pacific cod, and flatfish species, when allowed by Pacific Coast groundfish regulations.

(iv) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, halibut possession and retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(v) Recreational fishing for groundfish and halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut on board. The Stonewall Bank YRCA is an area off central Oregon, near Stonewall Bank, intended to protect yelloweye rockfish. The Stonewall Bank YRCA is defined at § 660.70(f).

(f) The quota for landings into ports in the area south of Humbug Mountain, OR (42°40.50′ N. lat.) to the Oregon/California Border (42°00.00′ N. lat.) (Southern Oregon subarea) is 8,605 lb (3.9 mt).

(i) The fishing season commences on May 1, and continues 7 days per week until the subquota is taken, or October 31, whichever is earlier.

(ii) The daily bag limit is one halibut per person with no size limit.

(iii) No Pacific Coast groundfish may be taken and retained, possessed or landed, except sablefish, Pacific cod, and flatfish species, in areas closed to groundfish, if halibut are on board the vessel.

(g) The quota for landings into ports south of the Oregon/California Border (42°00.00′ N. lat.) and along the California coast is 29,640 lb (13.44 mt).

(i) The fishing season will be open May 1–15, June 1–15, July 1–15, August 1–15, September 1–October 31, or until the subarea quota is estimated to have been taken and the season is closed by the Commission. NMFS will announce any closure by the Commission on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(ii) The daily bag limit is one halibut of any size per day per person.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) provides the Secretary of Commerce with the general responsibility to carry out the Convention between Canada and the United States for the management of Pacific halibut, including the authority to adopt regulations as may be necessary to carry out the purposes and objectives of the Convention and Halibut Act. This action is consistent with the Pacific Council's authority to allocate halibut catches among fishery participants in the waters in and off the U.S. West Coast.

This action has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) in association with the proposed rule for the 2016 Area 2A Catch Sharing Plan. The final regulatory flexibility analysis (FRFA) incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS received no comments on the IRFA. A copy of the FRFA is available from the NMFS West Coast Region (see **ADDRESSES**) and a summary of the FRFA follows.

This rule implements changes to the Halibut Catch Sharing Plan (CSP) that addresses the commercial and recreational fisheries within Area 2A (waters off the U.S. West Coast). The International Pacific Halibut Commission (IPHC) sets the overall Total Allowable Catch (TAC) and the CSP governs the allocation of that TAC between tribal and non-tribal fisheries, and among non-tribal fisheries. The Council, with input from industry, the states, and the tribes, may recommend changes to the CSP. (Note that the IPHC also sets the commercial fishery opening date(s), duration, and vessel trip limits to ensure that the quota for the non-tribal fisheries is not exceeded.) For non-tribal fisheries, the CSP governs allocations of the TAC between various components of the commercial fisheries and recreational fisheries, and these allocations may vary depending on the level of the TAC. Seasons, gear restrictions, and other management measures implemented through domestic regulations are then used to meet the allocations and priorities of the CSP.

There were no significant issues raised by the public comments in response to IRFA. The IPHC increased the Area 2A TAC by 17.5% from 970,000 lbs (2015) to 1,140,000 lbs (517.10 mt). Within this 17.5% increase, different subgroups are being affected differently because of the CSP allocation formula.

Changes to the Plan

The 2A Halibut Catch Sharing Plan, as outlined above, allocates the TAC at various levels. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the commercial allocation of the Pacific halibut TAC, and incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53.30′ N. lat.), Oregon, and California. North of 46°53.30′ N. lat. (Pt. Chehalis), the Plan allows for incidental halibut retention in the sablefish primary fishery when the overall Area 2A TAC is above 900,000 lb (408.2 mt). The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits. The non-tribal allocation is divided into four shares. At the first level, there are specific percentage allocations for tribal and non-tribal fisheries. The non-tribal portion is then allocated to commercial components and to recreational components. The commercial component is then apportioned into directed, incidental troll, and incidental sablefish fisheries. The recreational portions for Oregon and Washington are furthered apportioned into area subquotas and these subquotas are further split into seasonal or depth fisheries (nearshore vs all depths). There may be gear restrictions and other management measures established as necessary to minimize the potential for the allocations to be exceeded.

At the September meeting, the Council adopted a range of Plan alternatives for public review. For 2016, the Council adopted two types of changes that are discussed separately below. The first were the routine recreational fishery adjustments to the Plan proposed by the states each year to accommodate the needs of their fisheries. The second were changes to the Plan and codified regulations proposed by NMFS which do not have alternatives, because they are either mandated by a recent court decision or are administrative in nature. At its November meeting, the Council made final Plan change recommendations from the range of alternatives for the recreational fishery adjustments; which is described in detail below.

The changes to the Plan are expected to slightly increase fishing opportunities in some areas and at some times and to slightly decrease fishing opportunities in other areas and at other times. The Council's recommended changes to the Plan modify the opening dates for the sport fisheries in Washington and Oregon with the goal of extending the seasons and increasing opportunity. The change to the tribal Usual &Accustomed (U&A) boundaries is made to comply with a court order, and NMFS has no discretion to do otherwise. Thus this change is not analyzed here. The Council considered changes to the Washington North Coast, Columbia River, Oregon Central Coast, and Southern Oregon subareas:

(1) For the Washington North Coast, the Council considered two opening dates: The first Thursday in May or the first Saturday in May. The Council recommended and this final rule implements an opening day for this fishery on the first Saturday in May. This is a minor change that will not reduce overall fishing opportunity in this area.

(2) For the Columbia River subarea, the Council considered two season structures: Status quo (4 days per week Thursday through Sunday) and a seven day a week fishery. The Council recommended the status quo season structure because ODFW did not receive definitive public support for this change and felt it was not necessary at this time; therefore, this rule does not implement changes to the Columbia River subarea.

(3) For the Oregon Central Coast subarea, the Council considered two season allocation alternatives: Status quo (12 percent nearshore, 63 percent spring, 25 percent summer) and Alternative 1 (81.75 percent spring and summer combined, 18.25 percent nearshore). The Council recommended the status quo season allocations because ODFW felt, given the magnitude of this change, more time was needed to allow public input; therefore, this rule does not implement any change to the Oregon Central Coast season allocations.

(4) For the Oregon Central Coast nearshore fishery, the Council considered a change to the season dates: (1) Status quo fishery opens July 1, seven days per week until October 31; (2) fishery opens May 1, seven days per week, until October 31; (3) fishery opens May 1, seven days per week until October 31 or quota attainment, with 25 percent of the nearshore fishery allocation set-aside and available beginning July 1; and (4) fishery opens May 1, seven days per week until October 31 or quota attainment, with 50 percent of the nearshore fishery allocation set-aside and available beginning July 1. The Council recommended and this rule implements an alternative that is within the range listed above that would open the fishery on June 1, seven days per week, until October 31. This is a minor change that will not reduce overall fishing opportunity in this area.

(5) For the Southern Oregon subarea, the Council considered two incidental retention alternatives: Status quo (no bottomfish species retention outside of 30 fathoms) and Alternative 1 (allow retention of other species of flatfish, Pacific cod, and sablefish outside 30 fathoms, when fishing for halibut) and an allocation modification from 4 percent to 3.91 percent of the Oregon sport allocation. The Council recommended and this final rule implements the change to the subarea allocation and Alternative 1 with a slight modification to describe this allowance as allowed when groundfish retention is closed not at a specific depth. The changes to the Southern Oregon incidentally landed species allowances are expected to increase recreational opportunities by turning previously discarded incidental flatfish catch into landed catch.

The Small Business Administration defines a "small" harvesting business as one with annual receipts, not in excess of $20.5 million. For related fishprocessing businesses, a small business is one that employs 500 or fewer persons. For wholesale businesses, a small business is one that employs not more than 100 people. For marinas and charter/party boats, a small business is one with annual receipts, not in excess of $7.5 million. This rule directly affects charterboat operations, and participants in the non-treaty directed commercial fishery off the coast of Washington, Oregon, and California. Applying the SBA's size standard for small businesses, NMFS considers all of the charterboat operations and participants in the non-treaty directed commercial fishery affected by this action as small businesses.

In 2015, 512 vessels were issued IPHC licenses to retain halibut. IPHC issues licenses for: The directed commercial fishery and the incidental fishery in the sablefish primary fishery in Area 2A (22 licenses in 2015); incidental halibut caught in the salmon troll fishery (363 licenses in 2015); and the charterboat fleet (127 licenses in 2013, the most recent year available). No vessel may participate in more than one of these three fisheries per year. These license estimates overstate the number of vessels that participate in the fishery. IPHC estimates that 60 vessels participated in the directed commercial fishery, 100 vessels in the incidental commercial (salmon) fishery, and 13 vessels in the incidental commercial (sablefish) fishery. All of these estimated 173 commercial vessels are considered small entities. Although recent information on charterboat activity is not available, prior analysis indicated that 60 percent of the IPHC charterboat license holders may be affected by these regulations.

The major effect of halibut management on small entities is from the internationally set TAC decisions made by the IPHC. Based on the recommendations of the states, the Council recommended and NMFS is implementing in this final rule minor changes to the Plan to provide increased recreational and commercial opportunities under the allocations that result from the TAC. There are no large entities involved in the halibut fisheries; therefore, none of these changes will have a disproportionate negative effect on small entities versus large entities. These minor changes to the Plan are not expected to have a significant economic impact on a substantial number of small entities.

This final rule does not contain a collection of information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). There are no projected reporting or recordkeeping requirements associated with this action. There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

Pursuant to Executive Order 13175, the Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Section 302(b)(5) of the Magnuson-Stevens Fishery Conservation and Management Act establishes a seat on the Council for a representative of an Indian tribe with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The U.S. Government formally recognizes that 13 Washington tribes have treaty rights to fish for Pacific halibut. The Plan allocates 35 percent of the Area 2A TAC to U.S. treaty Indian tribes in the State of Washington. Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. Accordingly, tribal allocations and regulations, including the changes to the Plan, have been developed with the affected tribe(s) and, insofar as possible, with tribal consensus.

In 2014, an Environmental Assessment (EA) was prepared analyzing the continuing implementation of the Catch Sharing Plan for 2014–2016. The Plan changes for 2016 are not expected to have any effects on the environment beyond those discussed in the EA and in the finding of no significant impact (FONSI).

NMFS conducted a formal section 7 consultation under the Endangered Species Act for the Area 2A Catch Sharing Plan for 2014–2016 addressing the effects of implementing the Plan on ESA-listed yelloweye rockfish, canary rockfish, and bocaccio in Puget Sound, the Southern Distinct Population Segment (DPS) of green sturgeon, salmon, marine mammals, and sea turtles. In the biological opinion the Regional Administrator determined that the implementation of the Catch Sharing Plan for 2014–2016 is not likely to jeopardize the continued existence of Puget Sound yelloweye rockfish, Puget Sound canary rockfish, Puget Sound bocaccio, Puget Sound Chinook, Lower Columbia River Chinook, and green sturgeon. It is not expected to result in the destruction or adverse modification of critical habitat for green sturgeon or result in the destruction or adverse modification of proposed critical habitat for Puget Sound yelloweye rockfish, canary rockfish, or bocaccio. In addition, the opinion concluded that the implementation of the Plan is not likely to adversely affect marine mammals, the remaining listed salmon species and sea turtles, and is not likely to adversely affect critical habitat for Southern resident killer whales, stellar sea lions, leatherback sea turtles, any listed salmonids, and humpback whales. Further, the Regional Administrator determined that implementation of the Catch Sharing Plan will have no effect on southern eulachon; this determination was made in a letter dated March 12, 2014. The 2016 Plan and regulations do not change the conclusions from the biological opinion.

NMFS is currently conducting informal consultation with the US Fish and Wildlife Service regarding the ongoing implementation of the Catch Sharing Plan and its effects on short-tailed and black-footed albatross, California least tern, marbled murrelet, bull trout, and sea otters. NMFS has prepared a 7(a)(2)/7(d) determination memo under the ESA concluding that any effects of the 2016 fishery on listed seabirds are expected to be quite low, and are not likely to jeopardize the continued existence of any listed species. Further, in no way will the 2016 fishery make an irreversible or irretrievable commitment of resources by the agency.

NMFS finds good cause to waive the 30-day delay in effectiveness and make this rule effective on April 1, 2016, pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective on April 1, 2016, when incidental halibut retention in the sablefish primary fishery begins. The 2016 TAC is higher than the 2015 TAC, resulting in increased allocations to the salmon troll and sablefish primary fisheries. Therefore, allowing the 2015 measures to remain in place could unnecessarily restrict the fisheries with incidental landing limits that do not match the increased allocations. Finally, this final rule approves the Council's 2016 Plan that responds to the needs of the fisheries in each state and approves the portions of the Plan allocating incidentally caught halibut in the salmon troll and sablefish primary fisheries, which start April 1. Therefore, allowing the 2015 subarea allocations and Plan to remain in place would not respond to the needs of the fishery and would be in conflict with the Council's final recommendation for 2016. For all of these reasons, a delay in effectiveness could ultimately cause economic harm to the fishing industry and associated fishing communities by reducing fishing opportunity at the start of the fishing year to keep catch within the lower 2015 allocations or result in harvest levels inconsistent with the best available scientific information. As a result of the potential harm to fishing communities that could be caused by delaying the effectiveness of this final rule, NMFS finds good cause to waive the 30-day delay in effectiveness and make this rule effective on April 1, 2016.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: March 29, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61, revise the definition of "Subarea 2A–1" to read as follows:

§ 300.61 Definitions

* * * * *

Subarea 2A–1 includes all waters off the coast of Washington that are north of the Quinault River, WA (47°21.00′ N. lat) and east of 125°44.00′ W. long; all waters off the coast of Washington that are between the Quinault River, WA (47°21.00′ N. lat) and Point Chehalis, WA (46°53.30′ N. lat.), and east of 125°08.50′ W. long.; and all inland marine waters of Washington.

* * * * *

■ 3. In § 300.63, revise paragraphs (c)(3)(ii) and (e)(1), and remove paragraphs (f) and (g) to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

* * * * *

(c) * * *

(3) * * *

(ii) Actual notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, at 206–526–6667 or 800–662–9825. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor the telephone hotline for current information for the area in which they are fishing.

* * * * *

(e) * * *

(1) Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside of a closed area, known as the Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10′ N. lat. Between the U.S./Canada border and 46°16′ N. lat., the eastern boundary of the RCA, is the shoreline. Between 46°16′ N. lat. and 40°10′ N. lat., the RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at 50 CFR 660.71(e). Between the U.S./Canada border and 40°10′ N. lat., the RCA is defined along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at 50 CFR 660.73(a).

* * * * *

■ 4. In § 300.64, revise paragraph (i) to read as follows:

§ 300.64 Fishing by U.S. treaty Indian tribes.

* * * * *

(i) The following table sets forth the fishing areas of each of the 13 treaty Indian tribes fishing pursuant to this section. Within subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal Court.

Tribe	Boundaries
HOH	The area between 47°54.30′ N. lat. (Quillayute River) and 47°21.00′ N. lat. (Quinault River) and east of 125°44.00′ W. long.
JAMESTOWN S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown S'Klallam Tribe may fish under rights secured by treaties with the United States.
LOWER ELWHA S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha S'Klallam Tribe may fish under rights secured by treaties with the United States.
LUMMI	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 360, as modified in Subproceeding No. 89–08 (W.D. Wash., February 13, 1990) (decision and order re: cross-motions for summary judgement), to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
MAKAH	The area north of 48°02.25′ N. lat. (Norwegian Memorial) and east of 125°44.00′ W. long.
NOOKSACK	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Nooksack Tribe may fish under rights secured by treaties with the United States.
PORT GAMBLE S'KLALLAM	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble S'Klallam Tribe may fish under rights secured by treaties with the United States.
QUILEUTE	The area between 48°10.00′ N. lat. (Cape Alava) and 47°31.70′ N. lat. (Queets River) and east of 125°44.00′ W. long
QUINAULT	The area between 47°40.10′ N. lat. (Destruction Island) and 46°53.30′ N. lat. (Point Chehalis) and east of 125°08.50′ W. long.
SKOKOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.

Tribe	Boundaries
SUQUAMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
SWINOMISH	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
TULALIP	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash., 1974), and particularly at 626 F. Supp. 1531–1532, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.

[FR Doc. 2016–07438 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[Docket No. 150618531–6286–02]

RIN 0648–BF17

Atlantic Highly Migratory Species; Implementation of the International Commission for the Conservation of Atlantic Tunas Electronic Bluefin Tuna Catch Documentation System

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; fishery notification.

SUMMARY: This final rule adopts regulations governing international trade documentation and tracking programs for Atlantic bluefin tuna to fulfill recommendations from recent meetings of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The final rule transitions from the current ICCAT paper-based bluefin tuna catch documentation program (BCD program), used in the United States by highly migratory species (HMS) international trade permit (ITP) holders, to use of the ICCAT electronic bluefin tuna catch documentation system (eBCD system). The final rule also contains two unrelated regulatory text corrections related to bluefin tuna landings reports and cross-references related to prohibitions for fishing Atlantic tunas with speargun gear.

Additionally, NMFS will hold three public conference call and webinars on April 21, April 22, and May 3, 2016, to provide further information on requirements of the final rule and use of the eBCD system (see **SUPPLEMENTARY INFORMATION**).

DATES: This rule is effective on May 1, 2016. Operator-assisted, public conference call and webinars will be held on April 21, April 22, and May 3, 2016, from 2:30 to 4:30, Eastern Time.

ADDRESSES: For details on the call-in and Web site information for three public conference call and webinars, please see the table in the **SUPPLEMENTARY INFORMATION** section, under the "Public Conference Call and Webinars" heading.

Copies of the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) and other relevant documents are available from the Atlantic HMS Management Division Web site at *www.nmfs.noaa.gov/sfa/hms.*

FOR FURTHER INFORMATION CONTACT: Carrie Soltanoff at (301) 427–8503.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* ATCA requires the Secretary of Commerce to promulgate such regulations as may be necessary and appropriate to implement ICCAT recommendations. The implementing regulations for international trade documentation and tracking programs for HMS are at 50 CFR part 300.

Background

Background information about the need to implement ICCAT recommendations to transition from the current paper-based BCD program to an eBCD system was provided in the preamble to the proposed rule (80 FR 61146, October 9, 2015) and most of that information is not repeated here.

In response to the need to detect fraud and deter illegal, unregulated, and unreported (IUU) shipments, as well as to improve tracking of bluefin tuna catch and commerce, ICCAT adopted Recommendation 10–11 in 2010 to develop an eBCD system, which would ultimately replace the paper-based BCD program. Deadlines were set for system implementation in subsequent recommendations that ultimately proved too ambitious given system development and financing issues.

Most recently, ICCAT adopted Recommendation 15–10 requiring all ICCAT parties to use the eBCD system as of May 1, 2016, unless, based on examination of the status of the system, a technical working group (TWG) advises the Commission that the system is not sufficiently ready for implementation. If the TWG so advises the Commission, all ICCAT parties must use the eBCD system to the fullest extent practicable, but paper BCDs shall continue to be accepted until the system is sufficiently ready to be implemented. The TWG will meet in late April 2016. After May 1, 2016, or the date that the TWG advises the Commission that the system is sufficiently ready to be implemented (whichever is later), paper BCDs will no longer be accepted except in limited circumstances consistent with the ICCAT recommendation. Such limited circumstances include the use of paper BCDs as a "back-up" in the event that technical difficulties with the system arise that precludes use of the eBCD system. In light of the above, the final rule includes a provision allowing NMFS to notify the public (via actual or **Federal Register** notice) when paper BCDs will be used in lieu of the eBCD system.

The eBCD system is designed to collect largely the same information that is currently collected under the paper-based BCD program. Therefore, this final rule makes minor adjustments to the existing regulations implementing the paper-based BCD program to implement the electronic system and require its use for bluefin tuna catch documentation.

NMFS also notes, for informational purposes only, that on December 29, 2015, NMFS published a proposed rule in the **Federal Register** (80 FR 81251) to integrate the collection of trade documentation within the government-wide International Trade Data System (ITDS) and require electronic information collection through the automated portal maintained by the Department of Homeland Security, Customs and Border Protection (CBP). That proposed rule contemplates that NMFS would annually require renewable International Fisheries Trade Permits (IFTPs) for the import, export, and re-export of certain regulated seafood commodities that are subject to trade monitoring programs of RFMOs and/or subject to trade documentation requirements under domestic law, consolidating existing international trade permits for regulated seafood products under programs including the HMS ITP program. The ITDS rule, if finalized as proposed, would also specify data and trade documentation for regulated seafood commodities in specified programs that must be provided electronically to CBP. Specifically, the ITDS rule as proposed would further amend the HMS ITP regulations so that BCDs, or specific information from BCDs such as a BCD number, would be submitted through the Automated Commercial Environment (ACE) and the CBP Document Imaging System (DIS).

Response to Comments

The comment period for the proposed rule closed on November 9, 2015. NMFS received one comment from an environmental non-governmental organization, delivered both in writing and verbally during a public conference call/webinar on October 13, 2015. A summary of that comment is provided below along with NMFS's response.

Comment 1: We fully support the transition to an electronic system by May 2016. Full implementation of the eBCD system will benefit the U.S. fishing community by reducing opportunities for criminal activity, rewarding compliant fishermen, and supporting this valuable fishery's long-term sustainable management.

Response: NMFS agrees that the measures implemented by this rule would improve tracking of bluefin tuna catch and trade, enhancing ICCAT's ability to monitor trade and identify any discrepancies between the amount of product in international trade and authorized quotas, and reduce the possibility of IUU bluefin tuna entering U.S. commerce. NMFS also agrees that use of the eBCD system should be implemented by the May 1, 2016 deadline adopted by ICCAT in Recommendation 15–10 and consistent with the provisions in that Recommendation.

Changes From the Proposed Rule

In this final rule NMFS has added a provision that certain trade tracking requirements must be satisfied by use of the ICCAT eBCD system for Atlantic bluefin tuna "unless NMFS provides otherwise through actual notice or **Federal Register** notice." *See* § 300.185(a)(2)(ii)(A)(*1*), (a)(2)(vi)(A), (a)(3)(i); (b)(2)(i), (b)(3)(i); (c)(2)(i)(A); (c)(3)(i). ICCAT Recommendation 15–10 provides limited circumstances under which paper BCDs may be accepted. Specifically, paper BCDs may be used if the system is not ready for implementation and as a "back-up" in the event that technical difficulties with the system arise that preclude use of the eBCD system. In such an event, the final rule allows NMFS to notify the public through actual or **Federal Register** notice that paper BCDs will temporarily be used, as specified in the notice. NMFS also included one change from the proposed new regulatory text at § 300.185(a)(2)(iii)(b) to read "must" instead of "should" to more precisely match the relevant ICCAT Recommendation text.

To enhance the clarity of the regulations, the final rule breaks out the Atlantic bluefin tuna eBCD requirements into separate subparagraphs (*see* § 300.185(a)(2)(ii)(A)(*1*), (a)(2)(vi)(A), (a)(3)(i); (b)(2)(i), (b)(3)(i); (c)(2)(i)(A); (c)(3)(i)), and adds text in other subparagraphs to reiterate that paper documentation continues to be used for non-Atlantic bluefin tuna (*see* § 300.185(a)(2)(ii)(A)(*2*), (a)(2)(vi)(B), (a)(3)(ii); (b)(2)(ii), (b)(3)(ii); (c)(2)(i)(B); (c)(3)(ii)). For example, section 300.185(a)(2)(ii)(A)(*2*) states that: "For non-Atlantic bluefin tuna, this requirement must be satisfied with the original paper re-export certificate." These edits were made for clarity and do not change the substantive effect of the rule.

In addition to these changes, two unrelated corrections to the HMS regulations are included in this final rule for purposes of administrative efficiency (*i.e.*, they are included in this action rather than in separate rulemakings). The first change reinserts language inadvertently omitted in the final rule to implement Amendment 7 to the 2006 Consolidated HMS FMP, which was published in the **Federal Register** on December 2, 2014 (79 FR 71510). The Amendment 7 final rule inadvertently omitted text at 50 CFR 635.5(b)(2)(i)(A) that provided an option for Atlantic tunas dealers to submit bluefin tuna landings reports via the Internet. A correction to re-insert that language is included in this final rule.

The second change corrects an incorrect cross-reference. The regulations at § 635.71(b)(30), (31), (33), (34), and (35), which are prohibitions for fishing Atlantic tunas with speargun gear, contain an incorrect cross-reference, which is listed as § 635.21(f) but should refer to § 635.21(i). The cross-reference is corrected in this final rule.

Public Conference Call and Webinars

NMFS will hold three public conference call and webinars to provide further information about the requirements of the final rule and use of the eBCD system. To participate in those calls, use the following information:

TABLE 1—DATE AND TIME OF PUBLIC CONFERENCE CALL AND WEBINARS

Date and time	Access information
April 21, 2016, 2:30–4:30 p.m. Eastern Time.	To participate in conference call, call: (888) 989–4714 Passcode: 2848482 To participate in webinar, go to: *https://noaaevents3.webex.com/noaaevents3/onstage/g.php?MTID=ef13acb1e3c8d48e686c79f590cd8299f* Meeting Number: 994 455 972 Meeting Password: tijeshGb
April 22, 2016, 2:30–4:30 p.m. Eastern Time.	To participate in conference call, call: (800) 779–5244 Passcode: 9942853

TABLE 1—DATE AND TIME OF PUBLIC CONFERENCE CALL AND WEBINARS—Continued

Date and time	Access information
May 3, 2016, 2:30–4:30 p.m. Eastern Time.	To participate in webinar, go to: *https://noaaevents3.webex.com/noaaevents3/onstage/g.php?MTID=e82dcb0c46b71284d1e238f1463a91d52* Meeting Number: 996 520 461 Meeting Password: HVGU39hq To participate in conference call, call: (888) 323–9870 Passcode: 8184849 To participate in webinar, go to: *https://noaaevents3.webex.com/noaaevents3/onstage/g.php?MTID=edc2f51bca10de37d00803f879302dfcf* Meeting Number: 998 820 477 Meeting Password: JwdMqJyU

To participate in the webinars online, enter your name and email address, and click the "JOIN" button. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar. Presentation materials and other supporting information will be posted on the HMS Web site at *www.nmfs.noaa.gov/sfa/hms*.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In addition, NMFS has determined that this final rule would not affect the coastal zone of any state, and a negative determination pursuant to 15 CFR 930.35 is not required. Therefore, pursuant to 15 CFR 930.33(a)(2), coordination with appropriate state agencies under Section 307 of the Coastal Zone Management Act is not required.

This final action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216–6. A categorical exclusion applies because the rule would implement minor adjustments to regulations and would not have a significant effect, individually or cumulatively, on the human environment. This action also does not directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act. ICCAT Recommendation 15–10 requires transition from the paper-based BCD program to an eBCD system with certain limited exceptions. To comply with this Recommendation, NMFS will require Atlantic bluefin tuna dealers with HMS ITPs to use the eBCD system effective May 1, 2016. An amendment to OMB Control Number 0648–0040 (Dealer Reporting Family of Forms) has been approved by the Office of Management and Budget.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification or on the impacts of the rule more generally. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on the following three changes made in this final rule, as notice and comment would be impracticable, unnecessary, and contrary to the public interest. As explained above, this final rule makes three changes to the final rule: (1) A notice provision that allows for paper BCDs instead of eBCDs if NFMS provides actual notice or a **Federal Register** notice; (2) reinsertion of inadvertently-deleted text that allows Internet submission of bluefin dealer reports; and (3) correction of speargun cross-references.

With regard to the first change, prior notice and comment would be impracticable, contrary to the public interest, and unnecessary. ICCAT Recommendation 15–10, adopted after the proposed rule was published, included a provision on certain circumstances under which paper BCDs could continue to be accepted in lieu of eBCDs. These circumstances include using paper BCDs or printed eBCDs as a back-up in the limited event that technical difficulties with the system arise that preclude use of the eBCD system. The Recommendation also specified a process through which a TWG would make a determination regarding whether the system was sufficiently ready for implementation and specified that paper BCDs would be accepted until that determination was made. NMFS recently learned that the relevant TWG meeting will not take place until late April 2016. Thus, in the unlikely event that the system is not ready to be implemented, NMFS must have an option to allow the use of paper BCDs to ensure that bluefin tuna trade is not disrupted. On the other hand, if the system is ready for implementation, the final rule must be in place to ensure compliance with ICCAT recommendations and to switch over to the eBCD system. Given the unexpectedly late timing of TWG review, the simultaneous potential requirement to implement the system by May 1, and the need to have a back-up system as a contingency, the time required for public notice and comment would be impracticable. Moreover, not allowing this change is contrary to the public interest. In the absence of a paper-based option, if the eBCD system experiences technical problems, bluefin dealers with HMS ITPs would not be able to proceed with imports and exports of bluefin. Currently, dealers use paper BCDs, thus it is unnecessary to provide for notice and comment on continued—albeit, more limited—use of these documents.

With regard to the second change, prior notice and comment are contrary to the public interest and unnecessary. The final rule for Amendment 7 inadvertently deleted text from a prior rulemaking, the 2006 Consolidated HMS FMP (71 FR 58058; October 2, 2006), that allowed bluefin tuna dealers to submit reports via the internet. The regulations thus require reporting only via fax, which is more burdensome than using the internet. NMFS only recently learned about the error, and needs to make a correction immediately because current regulations without the reinserted text are confusing, inconsistent with established reporting practice, and burdensome. Furthermore, NMFS previously allowed notice and comment on the 2006 Consolidated HMS FMP, Amendment 7 never intended to change this reporting provision, and the record clearly reflects the intent to have an internet option.

There is also good cause to waive prior notice and comment for the third change. As currently written, the speargun prohibitions incorrectly cross-reference rod-and-reel provisions. Prior notice and comment on corrections to these cross-references is impracticable because NMFS just learned about the error and failure to make this minor change in a timely fashion may result in ongoing and unnecessary confusion among regulated parties. This confusion regarding the regulations could create enforcement issues with no corresponding benefit to the public. Thus, delaying the change to allow for notice and comment would be contrary to the public interest.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Exports, Fish, Fisheries, Fishing, Imports, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 29, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 300, subpart M, and 50 CFR part 635 are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300, subpart M, continues to read as follows:

Authority: 16 U.S.C. 951–961 and 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 300.181:

■ a. Revise the definitions for "BCD tag" and "Consignment document"; and

■ b. Add definitions for "eBCD" and "eBCD system" in alphabetical order.

The revisions and additions read as follows:

§ 300.181 Definitions.

* * * * *

BCD tag means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a BCD or eBCD.

* * * * *

Consignment document means either an ICCAT eBCD or paper BCD issued by a nation to comply with the ICCAT bluefin tuna catch documentation program consistent with ICCAT recommendations; or an ICCAT, IATTC, IOTC, or CCSBT statistical document or a statistical document issued by a nation to comply with such statistical document programs.

* * * * *

eBCD means an electronic bluefin tuna catch document (eBCD) generated by the ICCAT eBCD system to track bluefin tuna catch and trade as specified in ICCAT recommendations.

eBCD system is the ICCAT electronic system for creating, editing, and transmitting ICCAT catch and trade documentation for bluefin tuna as specified in ICCAT recommendations and required in these regulations.

* * * * *

■ 3. In § 300.185:

■ a. Revise paragraphs (a)(2)(ii) through (vii);

■ b. Remove paragraphs (a)(2)(viii) and (ix); and

■ c. Revise paragraphs (a)(3), (b)(2) and (3), (c)(2)(i) and (iii), and (c)(3).

The revisions read as follows:

§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) * * *

(2) * * *

(ii) Bluefin tuna:

(A) Imports which were re-exported from another nation must also be accompanied by an original, completed, approved, validated, species-specific re-export certificate.

(*1*) For Atlantic bluefin tuna, this requirement must be satisfied by electronic receipt and completion of a re-export certificate in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or **Federal Register** notice.

(*2*) For non-Atlantic bluefin tuna, this requirement must be satisfied with the original paper re-export certificate.

(B) Bluefin tuna, imported into the Customs territory of the United States or entered for consumption into the separate customs territory of a U.S. insular possession, from a country requiring a BCD tag on all such bluefin tuna available for sale, must be accompanied by the appropriate BCD tag issued by that country, and said BCD tag must remain on any bluefin tuna until it reaches its final import destination. If the final import destination is the United States, which includes U.S. insular possessions, the BCD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BCD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(iii) Fish or fish products regulated under this subpart other than bluefin tuna and shark fins:

(A) Imports that were previously re-exported and were subdivided or consolidated with another consignment before re-export, must also be accompanied by an original, completed, approved, validated, species-specific re-export certificate.

(B) Imports that have been previously re-exported from another nation must have the intermediate importer's certification of the original statistical document completed.

(iv) Consignment documents must be validated as specified in § 300.187 by an authorized government official of the flag country whose vessel caught the fish (regardless of where the fish are first landed). Re-export certificates must be validated by an authorized government official of the re-exporting country. For electronically generated Atlantic bluefin tuna catch documents, validation must be electronic using the ICCAT eBCD system.

(v) A permit holder may not accept an import without the completed consignment document or re-export certificate as described in paragraphs (a)(2)(i) through (iv) of this section.

(vi) For fish or fish products, except shark fins, regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment.

(A) For Atlantic bluefin tuna, this information must be provided electronically in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or **Federal Register** notice.

(B) For non-Atlantic bluefin tuna, this information must be provided on the original paper consignment document that accompanied the consignment.

(vii) Customs forms can be obtained by contacting the local CBP port office; contact information is available at *www.cbp.gov.* For a U.S. insular possession, contact the local customs office for any forms required for entry.

(3) *Reporting requirements.* For fish or fish products regulated under this subpart, except shark fins, that are entered for consumption and whose final destination is within the United States, which includes U.S. insular possessions, a permit holder must submit to NMFS the original consignment document that accompanied the fish product as completed under paragraph (a)(2) of this section, to be received by NMFS along with the biweekly report as required under § 300.183(a). A copy of the original completed consignment document must be submitted by the permit holder, to be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was entered for consumption into the Customs territory of the United States, or the separate customs territory of a U.S. insular possession.

(i) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (a)(2)(vi)(A) of this section, unless NMFS provides otherwise through actual notice or **Federal Register** notice.

(ii) For non-Atlantic bluefin tuna, this requirement must be satisfied by submitting the original paper consignment document.

(b) * * *

(2) *Documentation requirements.* A permit holder must complete an original, approved, numbered, species-specific consignment document issued to that permit holder by NMFS for each export referenced under paragraph (b)(1) of this section. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific export consignment. A permit holder must provide on the consignment document the correct information and exporter certification. The consignment document must be validated, as specified in § 300.187, by NMFS, or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export consignment.

(i) For Atlantic bluefin tuna, this requirement must be satisfied by electronic completion of a consignment document in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or **Federal Register** notice.

(ii) For non-Atlantic bluefin tuna, this requirement must be satisfied by completion of a paper consignment document.

(3) *Reporting requirements.* A permit holder must ensure that the original, approved, consignment document as completed under paragraph (b)(2) of this section accompanies the export of such products to their export destination. A copy of the consignment document must be received by NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States or a U.S. insular possession.

(i) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (b)(2)(i) of this section, unless NMFS provides otherwise through actual notice or **Federal Register** notice.

(ii) For non-Atlantic bluefin tuna, this requirement must be satisfied by submitting the original paper consignment document.

(c) * * *

(2) * * *

(i) If a permit holder re-exports a consignment of bluefin tuna, or subdivides or consolidates a consignment of fish or fish products regulated under this subpart, other than shark fins, that was previously entered for consumption as described in paragraph (c)(1) of this section, the permit holder must complete an original, approved, individually numbered, species-specific re-export certificate issued to that permit holder by NMFS for each such re-export consignment. Such an individually numbered document is not transferable and may be used only once by the permit holder to which it was issued to report on a specific re-export consignment. A permit holder must provide on the re-export certificate the correct information and re-exporter certification. The permit holder must also attach the original consignment document that accompanied the import consignment or a copy of that document, and must note on the top of both the consignment documents and the re-export certificates the entry number assigned by CBP authorities at the time of filing the entry summary.

(A) For Atlantic bluefin tuna, these requirements must be satisfied by electronic completion of a re-export certificate in the ICCAT eBCD system, unless NMFS provides otherwise through actual notice or **Federal Register** notice.

(B) For non-Atlantic bluefin tuna, these requirements must be satisfied by completion of a paper re-export certificate.

* * * * *

(iii) Re-export certificates must be validated, as specified in § 300.187, by NMFS or another official authorized by NMFS. A list of such officials may be obtained by contacting NMFS. A permit holder requesting validation for re-exports should notify NMFS as soon as possible to avoid delays in inspection and validation of the re-export shipment. Electronic re-export certificates created for Atlantic bluefin tuna using the ICCAT eBCD system will be validated electronically.

(3) *Reporting requirements.* For each re-export, a permit holder must submit the original of the completed re-export certificate (if applicable) and the original or a copy of the original consignment document completed as specified under paragraph (c)(2) of this section, to accompany the consignment of such products to their re-export destination. A copy of the completed consignment document and re-export certificate (if applicable) must be submitted to NMFS, at an address designated by NMFS, and received by NMFS within 24 hours of the time the consignment was re-exported from the United States.

(i) For Atlantic bluefin tuna, this requirement must be satisfied electronically by entering the specified information into the ICCAT eBCD system as directed in paragraph (c)(2)(i)(A) of this section, unless NMFS provides otherwise through actual notice or **Federal Register** notice.

(ii) For non-Atlantic bluefin tuna, this requirement must be satisfied by submitting the original paper re-export certificate.

* * * * *

■ 4. In § 300.186, revise paragraph (a) to read as follows:

§ 300.186 Completed and approved documents.

(a) *NMFS-approved forms.* A NMFS-approved consignment document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the Customs territory of the United States or the separate customs territory of a U.S. insular possession.

* * * * *

■ 5. In § 300.187, revise paragraphs (f) introductory text and (f)(2) to read as follows:

§ 300.187 Validation requirements.

* * * * *

(f) *BCD tags.* The requirements of this paragraph apply to Pacific bluefin tuna. Requirements for tagging Atlantic bluefin tuna are specified in § 635.5.

* * * * *

(2) *Transfer.* BCD tags for use on Pacific bluefin tuna issued under this section are not transferable and are usable only by the permit holder to whom they are issued.

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 6. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 7. In § 635.5, revise paragraph (b)(2)(i)(A) to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) *Landing reports.* Each dealer with a valid Atlantic Tunas dealer permit issued under § 635.4 must submit the landing reports to NMFS for each bluefin received from a U.S. fishing vessel. Such reports must be submitted electronically by sending a facsimile or, once available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the bluefin. Landing reports must include the name and permit number of the vessel that landed the bluefin and other information regarding the catch as instructed by NMFS. Landing reports submitted via facsimile must be signed by the permitted vessel owner or operator immediately upon transfer of the bluefin. When purchasing bluefin tuna from eligible IBQ Program participants or Atlantic Tunas Purse Seine category participants, permitted Atlantic Tunas dealers must also enter landing reports into the electronic IBQ System established under 635.15, not later than 24 hours after receipt of the bluefin. The vessel owner or operator must confirm that the IBQ System landing report information is accurate by entering a unique PIN when the dealer report is submitted. The dealer must inspect the vessel's permit to verify that it is a commercial category, the required vessel name and permit number as listed on the permit are correctly recorded on the landing report, and that the vessel permit has not expired.

* * * * *

■ 8. In § 635.71, revise paragraphs (b)(30), (31), (33), (34), and (35) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(b) * * *

(30) Fish for any HMS, other than Atlantic BAYS tunas, with speargun fishing gear, as specified at § 635.21(i).

(31) Harvest or fish for BAYS tunas using speargun gear with powerheads, or any other explosive devices, as specified in § 635.21(i).

* * * * *

(33) Fire or discharge speargun gear without being physically in the water, as specified at § 635.21(i).

(34) Use speargun gear to harvest a BAYS tuna restricted by fishing lines or other means, as specified at § 635.21(i).

(35) Use speargun gear to fish for BAYS tunas from a vessel that does not possess either a valid HMS Angling or HMS Charter/Headboat permit, as specified at § 635.21(i).

* * * * *

[FR Doc. 2016–07428 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160202070–6070–01]

RIN 0648–XE427

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment of Georges Bank and Southern New England/Mid-Atlantic Yellowtail Flounder Annual Catch Limits

Correction

In rule document 2016–06306, appearing on pages 14986 through 14988 in the issue of Monday, March 21, 2016, make the following corrections:

1. On page 14986, in the third column, in the **DATES** section, on the first line, "April 18, 2016" should read "March 18, 2016".

2. On page 14987, in the second column, on the seventeenth and eighteenth lines, "April 18, 2016" should read "March 18, 2016".

[FR Doc. C1–2016–06306 Filed 3–31–16; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 81, No. 63
Friday, April 1, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Document No. AMS–DA–14–0074]

National Dairy Promotion and Research Program Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites comments on a proposed amendment to the Dairy Promotion and Research Order (Dairy Order). The proposal would modify the number of National Dairy Promotion and Research Board (Dairy Board) importer members. The total number of domestic Dairy Board members would remain the same at 36 and the total number of importer members would be reduced from 2 to 1. The Dairy Order requires that at least once every three years, after the initial appointment of importer members on the Dairy Board, the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous three years and, on the basis of that review, if warranted, reapportion the importer representation on the Dairy Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products. This reapportionment review is the first conducted since importer members were appointed to the Dairy Board on November 2, 2011. The review could not be conducted prior to 2015 since the required data was not available.

DATES: Comments must be submitted on or before May 2, 2016.

ADDRESSES: Comments on this proposed rule should be identified with the docket number AMS–DA–14–0074. Commenters should identify the date and page number of the issue of the proposed rule. Interested persons may comment on this proposed rule using either of the following procedures:

- *Mail:* Comments may be submitted by mail to Whitney A. Rick, Director, Promotion, Research and Planning Division, Dairy Program, AMS, USDA, 1400 Independence Ave. SW., Room 2958–S, Stop 0233, Washington, DC 20250–0233.
- *Fax:* Comments may be faxed to (202) 720–0285.
- *Email:* Comments may be emailed to *Whitney.Rick@ams.usda.gov.*
- *Internet: www.regulations.gov.*

All comments to this proposed rule, submitted by the above procedures will be available for viewing at: *www.regulations.gov,* or at USDA, AMS, Dairy Program, Promotion, Research and Planning Division, Room 2958–S, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday, (except on official Federal holidays). Persons wanting to view comments in Room 2958–S are requested to make an appointment in advance by calling (202) 720–6909.

FOR FURTHER INFORMATION CONTACT: Whitney A. Rick, Director, Promotion, Research, and Planning Division, Dairy Program, AMS, USDA, 1400 Independence Ave. SW., Room 2958–S, Stop 0233, Washington, DC 20250–0233. Phone: (202) 720–6909. Email: *Whitney.Rick@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is issued pursuant to the Dairy Production Stabilization Act (Dairy Act) of 1983, Pub L. 98–180 as codified in 7 U.S.C. 4501–4514, as amended.

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Dairy Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 118 of the Dairy Act, any person subject to the Dairy Order may file with the Secretary a petition stating that the Dairy Order, any provision of the Dairy Order, or any obligation imposed in connection with the Dairy Order is not in accordance with the law and request a modification of the Dairy Order or to be exempted from the Dairy Order (7 U.S.C. 4509). Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Dairy Act provides that the district court of the United States in any district in which the person is an inhabitant or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Dairy Act authorizes a national program for dairy product promotion, research and nutrition education. Congress found that it is in the public interest to authorize the establishment of an orderly procedure for financing (through assessments on all milk produced in the United States for commercial use and on imported dairy products) and carrying out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

According to the U.S. Customs and Border Protection (CBP), in 2014, approximately 1,400 importers paid assessments under Section 1150.152(b). Although data is not available concerning the sizes of these firms, it is reasonable to assume that most of them would be considered small businesses. Although many types of businesses import dairy products, the most common classification for dairy product importers is Grocery and Related Product Merchant Wholesalers (North American Industry Classification System, category 4244). The Small Business Administration [13 CFR 121.201] defines such entities with fewer than 500 employees as small businesses.

The proposed rule would amend the Dairy Order by modifying the number of Dairy Board importer members.

Currently, the Dairy Order is administered by a 38-member Dairy Board, 36 members representing 12 geographic regions within the United States and 2 members representing importers. The Dairy Order at section 1150.131(f) provides that at least once every three years, after the initial appointment of importer members on the Dairy Board, the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous three years and, on the basis of that review, if warranted, reapportion the importer representation on the Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products.

The proposed amendment should not have a significant economic impact on persons subject to the Dairy Order. The proposed changes merely would allow representation on the Dairy Board to better reflect the volume of dairy product imports into the United States.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the information collection requirements and record keeping provisions imposed by the Dairy Order have been previously approved by OMB and assigned OMB Control No. 0581–0093. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

Statement of Consideration

The Dairy Order is administered by a 38-member Dairy Board, 36 members representing 12 geographic regions within the United States and 2 members representing importers. The Dairy Order requires in Section 1150.131(f) that at least once every three years, after the initial appointment of importer representatives on the Dairy Board, the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous three years and, on the basis of that review, if warranted, reapportion the importer representation on the Dairy Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products. This reapportionment review is the first conducted since importer members were appointed to the Dairy Board in 2011.

For initial representation of importers, the Dairy Act states "In making initial appointments to the Board of importer representatives, the Secretary shall appoint 2 members who represent importers of dairy products and are subject to assessment under the order." (7 U.S.C. 4504(b)(6)(A)) For subsequent representation of importers, the Dairy Act goes on to state "At least once every 3 years after the initial appointment of importer representatives under subparagraph (A), the Secretary shall review the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous 3 years and, on the basis of that review, shall reapportion importer representation on the Board to reflect the proportional share of the United States market by domestic production and imported dairy products." (7 U.S.C. 4504(b)(6)(B))

The Dairy Order at section 1150.131(f) states that the basis for the comparison of domestic production of dairy products to imported products should be estimated total milk solids. The calculation of total milk solids of imported dairy products for reapportionment purposes "shall be the same as the calculation of total milk solids of imported dairy products for assessment purposes." The reapportionment review was not conducted prior to 2015 because three full years' worth of data was not available.

Using National Agricultural Statistics Service (NASS) annual Dairy Products Summary data, the average U.S. milk total solids for domestic dairy products for 2012 to 2014 was 23,462 billion pounds annually. Based on the total milk solids number, each of the 36 domestic Dairy Board producer members would represent 652 million pounds of total milk solids (23,462 billion pounds divided by 36 producer members equals 652 million pounds per producer).

Using information received from CBP, the average total milk solids imported during 2012 to 2014 was 589 million pounds. Currently, each of the two importers on the Dairy Board would represent approximately 295 million pounds of total milk solids (589 million pounds divided by 2 importer members equals 295 million pounds per importer). Table 1 summarizes the total milk solids represented by the 36 domestic producer members and the total milk solids represented by the 2 current importer members.

TABLE 1—CURRENT DAIRY BOARD REPRESENTATION BASED ON U.S. TOTAL SOLIDS AND IMPORTED TOTAL SOLIDS BY POUNDS

Year	U.S. total solids, lbs.	Imported total solids, lbs.
2012	23,376,000,000	598,554,055
2013	23,203,000,000	570,628,490
2014	23,805,666,667	598,707,413
Average	23,461,555,556	589,296,653

Source: NASS, Dairy Products Annual Survey and CBP.

TABLE 2—CURRENT DAIRY BOARD REPRESENTATION BASED ON AVERAGE U.S. TOTAL SOLIDS AND AVERAGE IMPORTED TOTAL SOLIDS

	Average total milk solids (lbs.)	Current number of board seats	Average total milk solids represented per board member (lbs.)
Domestic Producer	23,461,555,556	36	651,709,877
Importer	589,296,653	2	294,648,327

Based on the calculations, it is proposed that Dairy Board importer member representation be reduced from 2 importer members to 1 importer member, to accurately represent the volume of imported total milk solids compared to the volume of total solids represented by each of the 36 domestic producer members. Table 2 reflects the proposed changes.

TABLE 3—PROPOSED DAIRY BOARD REPRESENTATION BASED ON U.S. TOTAL SOLIDS AND IMPORTED TOTAL SOLIDS

	Average total milk solids (lbs.)	Current number of board seats	Average total milk solids represented per board member (lbs.)
Domestic Producer	23,461,555,556	36	651,709,877
Importer	589,296,653	1	589,296,653

A 30-day comment period is provided for interested persons to comment on this proposed rule. One term of office for an importer member will expire on October 31, 2016. Thus, a 30-day comment period is provided for a timely announcement of the Dairy Board nomination solicitation in 2016.

List of Subjects in 7 CFR Part 1150

Dairy products, Milk, Promotion, Research.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

■ 1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 2. In § 1150.131, paragraph (c) is revised to read as follows:

§ 1150.131 Establishment and membership.

* * * * *

(c) One member of the board shall be an importer who is subject to assessments under § 1150.152(b).

* * * * *

Dated: March 29, 2016.

Erin Morris,

Associate Administrator.

[FR Doc. 2016–07413 Filed 3–31–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5431; Directorate Identifier 2015–CE–044–AD]

RIN 2120–AA64

Airworthiness Directives; M7 Aerospace LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for M7 Aerospace LLC Models SA26–AT, SA26–T, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes. This proposed AD was prompted by reports of multiple cracks in the steel horizontal tube of the cockpit control column. This proposed AD would require inspection of the cockpit control column horizontal tube with repair or replacement as necessary of the cockpit control column. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 16, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5431; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5431; Directorate Identifier 2015–CE–044–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA received reports of multiple cracks in the cockpit control column horizontal tube at the corners of the access panel cutout, at the pulley bolt welds, and at the elevator arm weld in the steel horizontal tube of the control column on M7 Aerospace SA26, SA226, and SA227 airplanes.

This condition, if not corrected, could result in partial or complete control column failure with partial or complete loss of pitch and/or roll control.

Related Service Information Under 1 CFR Part 51

We reviewed M7 Aerospace LLC SA26 Series Service Bulletin (SB) 26–27–002, M7 Aerospace LLC SA226 Series SB 226–27–078, M7 Aerospace LLC SA227 Series SB 227–27–058, and M7 Aerospace LLC SA227 Series SB CC7–27–030, all dated October 8, 2015. The service information describes procedures for inspection of the cockpit control column horizontal tube for cracks and repair or replacement of the cockpit control column as necessary. All of the related service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require repetitive inspections of the cockpit control column horizontal tube for cracks and repair or replacement of the cockpit control column as necessary.

Differences Between This Proposed AD and the Service Information

We have revised the compliance times of the proposed AD to differ from service information. We have determined we have met the safety intent with the revised compliance times while allowing for clarity. The compliance times in the proposed AD action would take precedence over those in the service bulletin.

Costs of Compliance

We estimate that this proposed AD affects 350 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	12 work-hours × $85 per hour = $1,020	Not applicable	$1,020	$357,000

We estimate the following costs to do any necessary repairs/replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that might need these repairs/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair cracks	2 work-hours × $85 per hour = $170	Not applicable	$170
Replace parts	16 work-hours × $85 per hour = $1,360	$5,000	6,360

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

M7 Aerospace LLC: Docket No. FAA–2016–5431; Directorate Identifier 2015–CE–044–AD.

(a) Comments Due Date

We must receive comments by May 16, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to M7 Aerospace LLC Models SA26–AT, SA26–T, SA226–AT, SA226–T, SA226–T(B), SA226–TC, SA227–AC (C–26A), SA227–AT, SA227–BC (C–26A), SA227–CC, SA227–DC (C–26B), and SA227–TT airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2700, Flight Controls.

(e) Unsafe Condition

This AD was prompted by reports of multiple cracks in the steel horizontal tube of the cockpit control column. We are issuing this AD to require repetitive inspections of the cockpit control column horizontal tube with repair or replacement, as necessary, of the cockpit control column. We are proposing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with paragraphs (g)(1) through (g)(2) of this AD using the following service bulletins within the compliance times specified below, unless already done:

(1) *For Models SA26–T and SA26–AT:* M7 Aerospace LLC Service Bulletin (SB) 26–27–002, dated October 8, 2015;

(2) *For Models SA226–AT, SA226–T, SA226–T(B), and SA226–TC:* M7 Aerospace LLC SB 226–27–078, dated October 8, 2015;

(3) *For Models SA227–AC(C–26A), SA227–AT, SA227–BC(C–26A), and SA227–TT:* M7 Aerospace LLC SB 227–27–058, dated October 8, 2015; or

(4) *For Models SA227–CC and SA227–DC (C–26B):* M7 Aerospace LLC SB CC7–27–030, dated October 8, 2015.

(g) Actions

(1) *For all airplanes:* Within the next 2,000 hours time-in-service (TIS) after the effective date of this AD or no later than when the airplane accumulates 20,000 hours TIS, whichever occurs later, do an initial inspection of the cockpit control column horizontal tube for cracks following paragraph 2.B. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (f)(2), (f)(3), or (f)(4) of this AD, as applicable; and repetitively inspect as follows:

(i) *For airplanes with less than 35,000 hours TIS as of the effective date of this AD:* Repetitively inspect the cockpit control column horizontal tube for cracks every 5,000 hours TIS until the airplane reaches 35,000 hours TIS at which time do the inspection within 2,000 hours TIS from the last inspection or within the next 100 hours TIS, whichever occurs later, and then thereafter at intervals not to exceed 2,000 hours TIS.

(ii) *For airplanes with 35,000 hours TIS or more as of the effective date of this AD:* Repetitively inspect the cockpit control column horizontal tube for cracks every 2,000 hours TIS.

(2) *For all airplanes:* If any cracks are found following the inspections required in paragraphs (g)(1), (g)(1)(i), or (g)(1)(ii), as applicable, before further flight, repair the control column following paragraph 2.C. of the Accomplishment Instructions of the service bulletins identified in paragraphs (f)(1), (f)(2), (f)(3), or (f)(4) of this AD.

(h) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth Airplane Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

(1) For more information about this AD, contact Andrew McAnaul, Aerospace Engineer, FAA, ASW–143 (c/o San Antonio MIDO), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; phone: (210) 308–3365; fax: (210) 308–3370; email: *andrew.mcanaul@faa.gov.*

(2) For service information identified in this AD, contact M7 Aerospace LLC, 10823 NE Entrance Road, San Antonio, Texas 78216; phone: (210) 824–9421; fax: (210) 804–7766; Internet: *http://www.elbitsystems-us.com;* email: *MetroTech@M7Aerospace.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on March 28, 2016.

Jacqueline Jambor,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–07371 Filed 3–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4551; Directorate Identifier 2016–NE–07–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–710A1–10, –710A2–20, and –710C4–11 turbofan engines. This proposed AD was prompted by a seized low-pressure turbine (LPT) fuel shut-off pawl carrier caused by corrosion of the pawl carrier pivot pin. This proposed AD would require removing the pawl carrier pivot pins, part number (P/N) BRR17117, from service and replacing them with parts eligible for installation. We are proposing this AD to prevent failure of the fuel shut-off mechanism, uncontained part release, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by May 31, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4551; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this NPRM. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–4551; Directorate Identifier 2016–NE–07–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this NPRM.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2016–0034, dated February 24, 2016 (referred to hereinafter as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Seizing of a fuel shut-off mechanism pawl carrier was reported. The subsequent investigation determined that corrosion of the pawl carrier pivot pin P/N BRR17117, was the failure cause.
>
> This condition, if not corrected, could lead to loss of the fuel shut-off mechanism functionality and loss of the engine over-speed protection, possibly resulting in release of high-energy debris, with consequent damage to, and/or reduced control of the airplane.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4551.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Germany, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This NPRM would require removing the pawl carrier pivot pin, P/N BRR17117, from service and replacing with a part eligible for installation.

Related Service Information

RRD has issued ASB SB–BR700–72–A101523, Revision 3, dated December 10, 2015. The service information describes procedures for replacing the pawl carrier pivot pins. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this proposed AD affects 4 engines installed on airplanes of U.S. registry. We also estimate that it would take about 3 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts cost about $860 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $4,460.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Rolls-Royce Deutschland GmbH (Type Certificate previously held by Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH): Docket No. FAA–2016–4551; Directorate Identifier 2016–NE–07–AD.

(a) Comments Due Date

We must receive comments by May 31, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to:

(i) Rolls-Royce Deutschland (RRD) BR700–710A1–10 engines with serial number (S/N) 11505 and below and with a low-pressure turbine (LPT) module, part number (P/N) M51–104 or P/N M51–111, installed;

(ii) RRD BR700–710A2–20 engines with S/N 12492 and below and with an LPT module, P/N M51–108 or P/N M51–111, installed;

(iii) RRD BR700–710C4–11 engines with S/N 15277 and below, with configuration standard 710C4–11 engraved on the engine data plate and with an LPT module, P/N M51–112, installed; and

(iv) RRD BR700–710C4–11 engines with S/N 15329 and below, with configuration standard 710C4–11/10 engraved on the engine data plate and with an LPT module, P/N M51–112, installed.

(2) Reserved.

(d) Reason

This AD was prompted by a seized LPT fuel shut-off pawl carrier caused by corrosion of the pawl carrier pivot pin. We are issuing this AD to prevent failure of the fuel shut-off mechanism, uncontained part release, damage to the engine, and damage to the airplane.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Within 6 months after the effective date of this AD, remove each pawl carrier pivot pin, P/N BRR17117, from service and replace with a part eligible for installation.

(2) Reserved.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Philip Haberlen, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7770; fax: 781–238–7199; email: *philip.haberlen@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2016–0034, dated February 24, 2016, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2016–4551.

(3) RRD Alert Service Bulletin SB–BR700–72–A101523, Revision 3, dated December 10, 2015, can be obtained from RRD using the contact information in paragraph (g)(4) of this AD.

(4) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: +49 (0) 33 7086 2673; fax: +49 (0) 33 7086 3276.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on March 25, 2016.

Colleen M. D'Alessandro,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–07378 Filed 3–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Parts 612 and 686

RIN 1840–AD07

[Docket ID ED–2014–OPE–0057]

Teacher Preparation Issues

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Supplemental notice of proposed rulemaking; re-opening of the comment period for specific issues.

SUMMARY: On December 3, 2014, the Department published a notice of proposed rulemaking (NPRM) to implement requirements for the teacher preparation program accountability system under title II of the Higher Education Act of 1965, as amended (HEA), and also to amend the regulations governing the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program under title IV of the HEA. The comment period closed on February 2, 2015.

The Department received over 4,800 comments in response to the NPRM. Some commenters requested clarification regarding how the proposed State reporting requirements would affect teacher preparation programs provided through distance education and TEACH Grant eligibility for students enrolled in teacher preparation programs provided through distance education. In response to these comments, the Department is considering revising the proposed regulations to clarify these areas.

This supplemental notice of proposed rulemaking (supplemental NPRM) therefore reopens the public comment period on the Teacher Preparation Issues proposed rule for 30 days solely to seek comment on these specific issues. The Department is not soliciting comments on any other issues related to the December 3, 2014, NPRM, and the Department will not consider public comments that address issues other than those specific to reporting by States on teacher preparation programs provided through distance education and TEACH Grant eligibility requirements for teacher preparation programs provided through distance education.

DATES: The comment period for a specific topic in the NPRM published on December 3, 2014 (79 FR 71820), is reopened. The due date for comments discussed in this supplemental NPRM is May 2, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only one time. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use Regulations.gov."

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Sophia McArdle, Ph.D., U.S. Department of Education, 400 Maryland Avenue SW., room 6W256, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Sophia McArdle, Ph.D., U.S. Department of Education, 400 Maryland Avenue SW., room 6W256, Washington, DC 20202. Telephone: (202) 453–6318 or by email: *sophia.mcardle@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 2014, the Department published an NPRM in the **Federal Register** (79 FR 71820) proposing requirements for the teacher preparation program accountability system under title II of the HEA (title II reporting system) that would result in the development and distribution of more meaningful data on teacher preparation program quality. That NPRM also included amendments to the regulations governing the TEACH Grant Program under title IV of the HEA that would condition TEACH Grant program funding on teacher preparation program quality, as well as update, clarify, and improve the current regulations to align them with the title II reporting system. The Department received over 4,800 comments in response to the proposed regulations.

The NPRM contained proposed requirements for State reporting on teacher preparation programs provided through distance education under the title II reporting system, as well as proposed regulations governing TEACH Grant eligibility for teacher preparation programs provided through distance education. Some commenters expressed concern that the proposed regulations did not provide enough clarity with respect to the requirements for teacher preparation programs provided through distance education. These commenters expressed concern about two specific areas in the proposed regulations related to teacher preparation programs offered through distance education.

The first area of concern was State reporting on teacher preparation programs provided through distance education. In the NPRM, we included requirements for States to report on certain metrics (student learning outcomes, employment outcomes, survey outcomes, and program characteristics) for teacher preparation programs in the State, including distance education programs. The NPRM proposed that the State reporting requirements would apply to all teacher preparation programs, including those offered through distance education. Our intent was to ensure that the State reporting requirements were consistent across teacher preparation programs, including teacher preparation programs provided through distance education. Commenters questioned which State would be responsible for reporting on, and determining the performance level for, teacher preparation programs provided through distance education.

Commenters stated that the proposed requirement was unclear. They specifically asked for clarification on whether only one State would be responsible for reporting on, and determining the performance level of, teacher preparation programs offered through distance education, or whether any State in which a teacher preparation program provided through distance education that enrolled students would do so. For example, according to some commenters, the proposed regulations could be interpreted as requiring a State to report: (a) Only if students enrolled in that program resided or become certified in the State; or (b) only if the teacher preparation program provided through distance education is physically headquartered in the State. The commenters asked us to clarify which of these alternatives would apply. Commenters also asked whether States would have to report on teacher preparation programs provided through distance education if those programs generated fewer than 25 teachers in a given State.

The second area of concern expressed by some commenters relates to TEACH Grant eligibility for students enrolling in teacher preparation programs offered through distance education. Commenters noted that there are teacher preparation programs offered through distance education that are available in multiple States, and, therefore, the same program could be rated as effective by one State and low-performing or at-risk of being low- performing by another. Commenters stated that the proposed regulations were unclear regarding both how TEACH Grant eligibility would be determined for students enrolled in a teacher preparation program offered through distance education, and, specifically, in instances where different States provide conflicting ratings. Commenters asked the Department to clarify these points in the regulations.

Provisions Under Consideration

In light of these comments, we are seeking comment on the proposals in this supplemental NPRM that would amend the proposed regulations. In particular, the Department seeks comments and recommendations on ways to improve, and alternatives to, these proposed amendments to the proposed regulations included in this supplemental NPRM.

In this regard, we note that while our NPRM proposed to incorporate the definition of "distance education" in 34 CFR 600.2, we know that some teacher preparation programs combine aspects of distance education with aspects of preparation that occur in a "brick and mortar" setting. While we solicit comments and recommendations on any aspect of this NPRM, we specifically solicit comments and recommendations on—

(1) Under what circumstances, for purposes of both reporting and determining the teacher preparation program's level of overall performance, a State should use procedures applicable to teacher education programs offered through distance education and when it should use procedures for teacher preparation programs provided at brick and mortar institutions, and

(2) For a single program, if one State uses procedures applicable to teacher preparation programs offered through distance education, and another State uses procedures for teacher preparation programs provided at brick and mortar, what are the implications, especially for TEACH Eligibility, and how these inconsistencies should be addressed.

Section 612.4—What are the regulatory reporting requirements for the State report card?

In the December 2014 NPRM, proposed § 612.4 requires that each State report to the Secretary, using a State report card (SRC) that is prescribed by the Secretary, on the quality of all approved teacher preparation programs in the State (both traditional teacher preparation programs and alternative routes to State certification or licensure programs), including distance education programs.

We also proposed that this reporting would occur regardless of whether or not those programs enroll students receiving Federal assistance under the HEA. As previously noted, although the Department intended that our proposed State reporting requirements apply to all teacher preparation programs, including those provided through distance education, we received comments asking for clarification on how and when States would need to report on teacher preparation programs provided through distance education.

To clarify how States must report on the quality of all teacher preparation programs provided through distance education in the State, we are proposing to amend the proposed regulations by striking the words "including distance education programs" from proposed § 612.4(a)(1)(1); redesignating proposed § 612.4(a)(1)(ii) as proposed § 612.4(a)(1)(iii); and adding new proposed § 612.4(a)(1)(ii). This new provision would require States to report on the quality of all teacher preparation programs provided through distance education in the State in ways that meet the reporting and aggregation requirements proposed in § 612.4(b)(4); however, rather than determine that the program produces 25 new teachers as set forth in our proposed § 612.4(b)(4), for teacher preparation programs provided through distance education, a State would determine whether there are at least 25 new teachers from that program who become certified in the State in a given title II reporting year.

Under § 612.4(b)(4) as proposed in the December 2014 NPRM, except for certain programs subject to proposed § 612.4(b)(4)(ii)(D) or (E), each State would ensure that all of its teacher preparation programs are represented in the SRC. Consistent with the NPRM, States would report on a teacher preparation program provided through distance education individually if the program produced at least 25 new teachers in the State, and would report through different aggregation methods if it produced fewer than 25 new teachers in the State.

In contrast, under new proposed § 612.4(a)(1)(ii), which applies to teacher preparation programs provided through distance education, consistent with the reporting threshold of 25 or more new teachers for reporting in previously proposed § 612.4(b)(4)(1), each State would be required to report annually and separately on the performance of each teacher preparation program provided through distance education if at least 25 graduates of that program become certified in the State in a title II reporting year. For teacher preparation programs provided through distance education, if fewer than 25 graduates of that program become certified in the State in a given title II reporting year, reporting would be accomplished consistent with the methods of reporting addressed in proposed § 612.4(b)(4)(ii). These proposed regulations would also permit a State, at its discretion, to establish a program size threshold lower than 25.

Thus, for a distance education program that produces fewer than 25 new teachers whom the State has certified to teach in a given title II reporting year, the State would use the same procedures for data aggregation in proposed § 612.4(a)(1)(ii)(A)–(C) as the State would use for all other small teacher preparation programs. Under proposed § 612.4(a)(1)(ii)(D) and (E), the State would be permitted to exclude from reporting distance education programs that are particularly small, for which aggregation procedures cannot be applied, or where reporting on those programs would be inconsistent with State or Federal privacy or confidentiality laws and regulations.

We are now proposing this regulation because of the inherent differences between "brick and mortar" teacher preparation programs and teacher preparation programs provided through distance education. Unlike teacher preparation programs physically located in a State that produce new teachers whom a State may easily confirm as completers of that program, a teacher preparation program provided through distance education generally does not have a physical location in the State, and its students could be participating in the program from anywhere. Any State would have great difficulty identifying and tracking new teachers the distance education program produces, much less new teachers it produces who plan to teach in the State.

Because we understand that States track individuals whom they certify as teachers in the State and collect what teacher preparation programs they have completed, it seems reasonable to apply the same State reporting requirements for distance education programs as we have proposed for "brick and mortar" programs that are physically located in the State with the one modification described above. That is, instead of the State reporting on the program based on the number of new teachers it produced in a given title II reporting year, for distance education programs the State would report using the procedures in proposed § 612.4(b)(4) based on whether the distance education program produced at least 25 teachers or fewer than 25 whom the State had certified to teach in the State in the title II reporting year. Where these teachers resided when they took the program would not matter.

Section 686.2 Definitions

High-Quality Teacher Preparation Program Provided Through Distance Education

For purposes of TEACH Grant eligibility, in the NPRM we proposed that, to be eligible for a TEACH Grant, an otherwise eligible student must, in part, be enrolled in a high-quality teacher preparation program. As previously noted, we received comments asking us to clarify how TEACH Grant eligibility would be determined for a student enrolled in a teacher preparation program offered through distance education, and specifically how TEACH Grant eligibility would be determined for a student if one State rates a teacher preparation program offered through distance education as ineffective and another State rates it as effective.

To clarify how TEACH Grant eligibility would be determined for a teacher preparation program provided through distance education, in this supplemental NPRM we are proposing to add a definition for the term "high-quality teacher preparation program provided through distance education." We would also make corresponding changes to the definitions of TEACH Grant-eligible institution and TEACH Grant-eligible program.

The proposed definition of a high-quality teacher preparation program in the December 2014 NPRM links a State's classification of a teacher preparation program as being of effective or exceptional to an institution physically located in the State; this classification is thus made on a State-by-State basis. We believe this proposed definition works well for "brick and mortar" teacher preparation programs offered by an institution physically located in a State, but not for teacher preparation programs provided through distance education as individuals may take those programs anywhere.

Furthermore, the types of teacher preparation programs provided through distance education that are offered by institutions vary. Some teacher preparation programs provided through distance education are State-specific, meaning that they are designed to prepare individuals to serve in a specific State, (*e.g.*, an Elementary Education program directed at teachers in California), while others are offered in multiple States and are not tailored to any specific State. We believe that, just as with "brick and mortar" teacher preparation programs, it is important to establish a feedback loop between teacher preparation programs provided through distance education and States, schools, and the public to inform the State that certifies its graduates as new teachers, the school districts in that State that hire them, and the general public. Additionally, all States should be able to assess, and hold accountable, the teacher preparation programs from which their teachers graduated according to their own standards and expectations. Institutions providing teacher preparation programs through distance education in multiple States should have an incentive to adapt those programs to be State-specific so that they can be responsive to the needs of that State and receive ratings that reflect performance only in that specific State.

Thus, the new proposed definition for a high-quality teacher preparation program provided through distance education would require that no single State has classified the program as low-performing or at-risk of being low-performing.

More specifically, we are proposing to define a high-quality teacher preparation program provided through distance education as a teacher preparation program provided through distance education that: (a) For TEACH Grant program purposes in the 2021–2022 title IV award year, is not classified by any State as low-performing or at-risk of being low performing under 34 CFR 612.4(b) in either or both the April 2020 and/or April 2021 SRCs; and (b) for TEACH Grant program purposes in the 2022–2023 title IV award year and subsequent award years, is not classified by any State as low-performing or at-risk of being low-performing under 34 CFR 612.4(b) for two out of the previous three years, with the earliest year being the April 2020 SRC. Taking into consideration that we have not yet published final regulations, we are proposing to move the implementation dates for these proposed regulations back by one year to account for the delay.

Thus, as with students enrolled in "brick and mortar" teacher preparation programs for the 2021–2022 title IV award year, no student enrolled in a teacher preparation program provided through distance education would be able to receive a TEACH Grant, regardless of their State of residence, if the program is classified by any State as low-performing or at-risk of being low-performing under 34 CFR 612.4(b) in either or both the April 2020 and/or April 2021 SRC. For TEACH Grant program purposes in the 2022–2023 title IV award year, students in the distance education program would not be able to receive TEACH Grants in any State if it is classified by any State as low-performing or at-risk of being low-performing under 34 CFR 612.4(b), in any two of the April 2020, 2021, or 2022 SRCs.

In other words, if one State classified a teacher preparation program provided through distance education as low-performing or at-risk of being low-performing in April 2020 and a different State classified the program as low-performing or at-risk in April of 2021, no student in any State who participates in that same distance education program would be able to receive a TEACH Grant in the 2021–2022 title IV award year because the program had been classified as low-performing or at-risk in both years by at least one State. Similarly, beginning with the April 2020 State Report Card, for the 2022–2023 title IV award year and subsequent award years, if one State classified a teacher preparation program provided through distance education as low-performing or at-risk for one year under 34 CFR 612.4(b), and another State classified the same distance education program as low-performing or at-risk of being low-performing in at least one of the next two years, no student in any State enrolled in that distance education program would be able to receive a TEACH Grant in the 2022–2023 title IV HEA award year.

We are confident that a State that has granted teacher certification to graduates of a teacher preparation program provided through distance education, and then found the program to be low-performing or at-risk of being low-performing, will want to work proactively with the program to improve its performance and to ensure that, when next evaluated, the State is able to report an acceptable level of performance. Moreover, even if only one State were to classify a teacher preparation program provided through distance education as low-performing or at-risk, this fact should raise great concern. Given that prospective teachers in teacher preparation programs provided through distance education may be seeking teaching positions in any of a number of States, they should be aware that one or more States have deemed that certain teacher preparation programs provided through distance education were classified as less than effective. We strongly believe that the States that rated the teacher preparation program provided through distance education as effective will want to work with the program in question to ensure that the program would maintain its effective or better classification, and the States that found the performance of the program to be less than effective would want to work with the program to ensure that the poor performance rating does not recur. Finally, we believe that this proposed provision will help ensure that eligibility to award TEACH grants is limited to IHEs that the Secretary determines provide high-quality teacher preparation, pursuant to HEA section 420L(1)(A).

Executive Orders 12866 and 13563

Regulatory Impact Analysis (RIA)

Discussion of Costs, Benefits, and Transfers

The Department has analyzed the costs of complying with the proposed regulations in this supplemental NPRM. Due to uncertainty about the total number of distance education programs in the country that would be subject to reporting under these proposed regulations, the current capacity of States in some relevant areas, and the considerable discretion the regulations would provide States (*e.g.*, the flexibility States would have in determining who conducts the teacher and employer surveys), we cannot evaluate the costs of implementing the regulations with absolute precision. However, based on the assumptions discussed below, we estimate that these proposed regulations would have a total annualized cost of approximately $234 thousand over ten years above those costs calculated for the remainder of the proposed regulations in the December 3, 2014 NPRM. We note that the analysis of costs, benefits, and transfers that follows uses the same categories of analysis as those included in the NPRM. For example, in the NPRM, the Department estimated cost and burden associated with the SRC based on a number of categories including, but not limited to, completing the SRC, posting the SRC on the State's Web site, and ensuring meaningful differentiation of programs. In this analysis, we use the same categories, though our estimates for each category have been revised in many instances to reflect public comment and current information and thinking. For example, we have updated the applicable wage rates to reflect the most recent data available from the Bureau of Labor Statistics and have increased the estimated time it would take to post the SRC to the State Web site from 0.25 hours to 0.5 hours. In this supplemental NPRM, the Department does not discuss or provide our responses to public comment on the estimates in our original NPRM but simply uses the revised estimated burden hours for our calculations. We will discuss public comment to all estimates in both NPRMs in our notice of final rulemaking. Additionally, we note that our estimates also have been revised to reflect updated wage rate data.[1]

The following is a detailed analysis of the estimated costs of implementing the specific requirements, including the costs of complying with paperwork-related requirements, followed by a discussion of the anticipated benefits. The burden hours of implementing specific paperwork-related requirements are also shown in the tables in the Paperwork Reduction Act section of this supplemental NPRM.

Number of Distance Education Programs

As noted elsewhere in this supplemental NPRM, these proposed regulations clarify States' responsibilities regarding reporting on teacher preparation programs offered through distance education. Reporting and accountability for such programs were not directly discussed in the original NPRM, and, therefore, were not explicitly included in our original cost estimates. However, upon review of prior State submissions under title II of the HEA, it is clear that at least some States have been reporting on distance education programs, though it is unclear to what extent such reporting was systematic either within or across States. As such, we believe that there will be an increase in the costs and burdens associated with reporting and accountability for such programs relative to our initial estimates.

In order to quantify the extent of these costs and burdens, the Department must first estimate the total number of teacher preparation programs provided through distance education on which reporting will be required. However, this is not a simple task. As noted above, States have not been systematically reporting on such programs, and it is possible that, under the proposed regulations, multiple States will be required to report on the same program (if, for example, a single distance education program produces 25 new teachers who become certified in each of multiple States). To estimate the total number of distance education teacher preparation programs nationwide, we used publicly available data from the Department's Integrated Postsecondary Education Data System (IPEDS).

In the IPEDS Completions survey component, IHEs identify programs of study at their institutions using Classification of Instructional Programs (CIP) codes that correspond to the particular subject area or focus of coursework. For each six-digit CIP code, the first two digits reference a broad area of study (*e.g.*, CIP codes beginning "13" are all education-focused programs). The next two digits of a CIP code reference a more specific, but still somewhat broad category of study within the broader subject area (*e.g.*, CIP codes beginning with "13.12" are all "Teacher Education and Professional Development, Specific Levels and Methods" programs). The final two digits of a six-digit CIP code reference the specific course of study that is being undertaken (*e.g.*, the CIP code "13.1202" references a course of study in "Elementary Education and Teaching"). To be clear, these CIP codes do not directly align to a "teacher preparation program" as defined in the proposed regulations. However, we believe that the use of these CIP codes approximates those teacher preparation programs as close as is possible using available data in IPEDS. We note that the use of CIP codes will result in collapsing multiple teacher preparation programs (as defined in the proposed regulations) that focus on the same area into a single "program" as we are able to capture it through IPEDS. For example, if an IHE has both traditional and alternative route teacher preparation programs in Elementary Education and Teaching, both teacher preparation programs (as defined in the proposed regulation) will be collapsed into one reporting instance under CIP code 13.1202. As such, it is possible that we may end up underestimating the total number of programs or overestimating the size of individual programs. However, we believe that, because we are using these data to identify distance education programs, we are unlikely to have major issues underestimating the number of such programs due to the aggregation within CIP codes, as we believe it is highly unlikely that an individual IHE would have multiple teacher preparation programs (as defined in the proposed regulations) offered through distance education within the same CIP code (*e.g.*, an IHE is unlikely to have two distance education teacher preparation programs in Elementary Education and Teaching leading to a Master's degree). Additionally, we believe that the use of other data points within the IPEDS system can help mitigate any issues related to the overestimate of the number of students in each program.

We first identified education programs nationwide that corresponded to CIP codes (either four or six digits) reported to the Department in the most recent title II reporting period. We then used additional information available in IPEDS to determine whether each of these programs were offered through distance education, the total number of program completers with the specific CIP code in the past year, and their award level (bachelors, Masters, etc.). For purposes of our final analysis, we only included awards of a Bachelor's degree, post-baccalaureate certificate, Master's degree, or post-Master's certificate. This was based on our belief that programs offering other types of academic awards (*e.g.*, Associate's degrees and doctorates) were unlikely to be programs leading to an initial teacher certification or licensure. Using this procedure, we identified 18,196 programs in IPEDS, where a program is a unique combination of institution, six-digit CIP code, and award level.[2] Of these 18,196 programs, 2,158 had a distance education component. This sub-set of distance education programs provided our base dataset for this analysis.

As noted elsewhere in this supplemental NPRM, States are required to report in their SRCs on all programs provided through distance education that produce teachers to whom the State has granted State certification; consistent with proposed § 612.4(b)(4), how a State reports depends on whether or not the State certifies at least 25 or more new teachers in any given title II reporting year. However, the IPEDS dataset does not provide the specific number of students in each program who completed the program via distance education, only the total number of completers and whether or not each program is offered via distance education. However, there are several ways to estimate the number of individuals who completed these programs through distance education.[3]

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[1] Unless otherwise specified, all hourly wage estimates for particular occupation categories were taken from the May 2014 National Occupational Employment and Wage Estimates for Federal, State, and local government published by the Department of Labor's Bureau of Labor Statistics and available online at *www.bls.gov/oes/current/999001.htm.*

[2] U.S. Department of Education, National Center for Education Statistics. Integrated Postsecondary Education Data System (IPEDS). Completions component (2013 final data).

[3] We focus on distance education program completers because we cannot use these IPEDS data (or any other data readily available to the Department) to determine the number of individuals (by program) who ultimately became certified new teachers. As such, and because we know that not all program completers ultimately become certified new teachers, our approach will likely generate an over-estimate of the actual number of new teachers and therefore of the

One way of estimating the number of individuals who complete teacher preparation programs offered through distance education is to assume that all individuals who complete a program that has a distance education component did so using the distance education option. This would, of course, provide the highest estimate for the total number of distance education students. However, it would fail to account for programs (unique CIP code/degree level/institution combinations) that are offered both on-site and through distance education and offer only a single degree (*e.g.*, a post-baccalaureate certificate program that can be taken online or in person, with half of graduates using each option). As such, we believe this methodology would result in an overestimate of the actual number of new distance education programs on which reporting would be required, particularly given the low level of distance education enrollment across institutions in this analytical sample (over 45 percent of institutions had a distance education enrollment rate of less than 10 percent).

IPEDS does offer data on the total number of individuals enrolled in programs through distance education at the institution level, but does not do so at the program (CIP code) level. However, as an alternative to the first methodology, we could use the institution-wide distance education rate as a proxy for the percentage of students in the teacher preparation program enrolled via distance education (*i.e.*, if 12 percent of an institution's students are enrolled in distance education, we would assume that 12 percent of the students in the teacher preparation program are also enrolled via distance education). While this approach would account for programs offered in multiple modalities (*i.e.*, CIP codes that have aggregated teacher preparation programs, as defined in the proposed regulations, that are offered via distance education with those offered in person), such an estimate may or may not be reasonable depending on whether the enrollment patterns of the specific teacher preparation program mirror the enrollment patterns of the institution as a whole. If a particular teacher preparation degree program at College A (for instance, a Master's degree in Secondary Education and Teaching) were only offered via distance education while the majority of students enrolled in College A were not enrolled via distance education, this methodology would under-estimate the size of the teacher preparation program in College A. However, while we believe this methodology may result in over- or under-estimates for individual programs, when aggregated across all programs, these individual errors will likely cancel each other out.[4]

Despite the improvements that an enrollment rate for distance education programs may make to our estimates, the requirements on reporting of distance education programs apply, under existing regulations, and these proposed regulations, to all teacher preparation programs in the State. As such, we assume that States would have already reported on such programs operating in their State in the current Title II data collection. In that instance, costs associated with these programs would have been included in the regulatory impact analysis in the December 3, 2014 NPRM. For example, if 70 percent of students in a teacher preparation program in Ohio are enrolled in a distance education program, and all of the program graduates become newly certified teachers in Ohio, the status of those recent graduates as distance education graduates would not result in any additional cost or burden on Ohio or other States because Ohio would have already been responsible for reporting on the program under the existing Title II data collection, and therefore costs related to implementing our proposed regulations are already a part of the cost estimates in our December 2014 NPRM (which used the current number of programs reported under title II of the HEA as a baseline).

Therefore, we believe that the best approach to estimating the costs of the regulations proposed in this supplemental NPRM is to use the number of students enrolled via distance education who, during the time they are enrolled, are located in a State or jurisdiction other than the one in which the institution is located.[5] In this instance, the State or States in which these "out of State" individuals are located (and, we will assume, the State(s) in which they will ultimately become new teachers), is the one with the reporting burden generated by the proposed regulations. Thus, in addition to the two methodologies described above, as another approach, we can also use the percentage of students enrolled via distance education outside of the State in which the institution is located as a proxy for the percentage of students who will become new teachers in another State. While we believe that this is the best estimation methodology of the three, for transparency purposes, in Table 1 below, we provide estimates using all three methodologies.

Once we have developed an estimate of the number of program completers for each program (unique CIP code/degree/institution combination), we must calculate the total number of programs on which States will be reporting. As provided in proposed § 612.4(b)(4), a State would be required to report on any teacher preparation program that produces 25 or more new teachers in a given reporting year and smaller programs, subject to a number of aggregation methods. While we do not have data on the number of new teachers produced by each of the distance teacher preparation programs in our database for this analysis, as stated above, we will assume that all program completers become new teachers in the State where they were located when completing the course. This will result in an overestimate of the reporting burden on States, as not all individuals completing such distance education programs will become new teachers. Using our dataset, we determined that 710 programs nationally had at least 25 program completers. Using the out-of-State distance education estimate as described above, there would only be 109 programs that required annual reporting beyond those in our initial estimates (which included 26,589 programs[6]).

In addition to having States report on those programs that produce 25 or more new teachers in a given reporting year, proposed § 612.4(b)(4)(ii) provides options for aggregating smaller programs that produce fewer teachers each year. Beginning with § 612.4(b)(4)(ii)(A), one option a State has is to aggregate data across programs operated by the same teacher preparation entity that are similar to or broader than the program in content. In order to estimate the number of additional programs that this provision would add to the calculations, we aggregated data for programs with fewer than 25 program completers with

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number of programs that meet the minimum size requirements.

[4] We note that our estimates also assume that the percentage of distance education enrollment is also the same as the percentage of students completing programs via distance education. To the extent that distance education enrollees are more or less likely to complete their program of study, this assumption will result in an under- or over-estimate of the number of distance education program completers.

[5] U.S. Department of Education, National Center for Education Statistics. Integrated Postsecondary Education Data System (IPEDS). Fall enrollment survey component (2014 provisional data).

[6] The estimates included in our original NPRM used 25,000 programs. However, since that time, more recent data are available from Title II reporting, which shows that there were 26,589 programs during the 2012–2013 academic year, spread across 2,171 providers.

other programs at the same institution with the same four-digit CIP code. This procedure not only collapsed programs across award levels (*e.g.*, counting Bachelor's degrees and post-baccalaureate certificates together), but also instructional programs that were largely similar to one another (*e.g.*, counting "Special Education and Teaching, General" and "Special Education and Teaching, Other" together). In doing so, we identified an additional 25 programs that could meet the program size threshold when assuming all program completers were distance education students (150 programs when not using any distance education proxies).

Under proposed § 612.4(b)(4)(ii)(B), States could alternatively aggregate small programs across reporting years (not to exceed four) until a sufficient program size was reached. In order to estimate the number of additional distance programs that this clause would generate, we determined the number of programs that generated fewer than 25 program completers in a given year that would, if aggregated across no more than four years, generate the required program size. In doing so, we identified a total of only 253 teacher preparation programs provided through distance education nationwide that had 25 or more program completers in a given year or, if aggregated across four years, would have at least 25 program completers.

Under proposed § 612.4(b)(4)(ii)(C), a State may use a combination of the two methods described above in order to meet the program size thresholds. For this estimate, the Department began by determining those programs that either did not have 25 program completers in a given year or would not generate 25 new teachers when aggregated across a number of years, not to exceed four. We then determined how many of the remaining programs could generate the required program size if aggregated with programs at the same institution with similar CIP codes (four digits) and with program completers aggregated across multiple years, not to exceed four. In using all of these combinations, the Department developed an estimate of 295 teacher preparation programs offered through distance education.

To provide upper-bound estimates of the burden these proposed distance education requirements would place on States, the Department used a different methodology to create proxy "programs"—groups of 25 program completers regardless of their actual course of study. First, the Department estimated the maximum number of "programs" on which a State would have to report if students at each institution were divided into the smallest possible programs that met the reporting thresholds (*e.g.*, if there were 100 program completers from University A, then States would have to report on a maximum of four "programs" of 25 completers each). Using this method, the Department developed an upper bound estimate of 3,013 programs. Similarly, if the Department did not consider either institution- or program-level information and divided the total number of program completers for all programs nationally in which distance education was an option, the Department estimates a maximum number of programs on which States would be required to report of 3,266. Obviously, the Department believes that these represent extreme upper bounds, as State-, institution-, and program-level differentiation would stop such a high level of reporting from being required.

As stated above, because the proposed regulations would only require additional reporting insofar as students are new teachers certified in States other than the one in which the institution is located, the Department believes that 295 is a reasonable estimate for the total number of additional teacher preparation programs provided through distance education on which States will be required to report beyond the reporting included in our initial estimates contained in the December 2014 NPRM. However, to further capture the maximum increased burden associated with this estimate, the Department further determined the maximum number of reporting instances that these 295 programs could generate. If new teachers from these 295 programs were divided into as many groups of 25 new teachers as possible (thus mandating reporting by the State), we estimate that there would be as many as 812 reporting instances from these 295 programs. As such, in the estimates that follow, we will calculate burden based on 812 additional reports required by States.

TABLE 1—ESTIMATES OF THE NUMBER OF TEACHER PREPARATION PROGRAMS PROVIDED THROUGH DISTANCE EDUCATION ON WHICH REPORTING WOULD BE REQUIRED UNDER § 612.4

	All completers from programs offered via distance	Total distance proxy[1]	Out-of-state distance proxy[2]
Program-dependent calculations[3]			
Programs with 25+ completers	710	203	109
Programs with 25+ completers plus programs with 25+ completers in programs with similar CIP codes[4]	860	250	134
Programs with 25+ completers plus programs with 25+ completers over 4 years[5]	1,387	552	253
Programs with 25+ completers plus programs with 25+ completers over 4 years plus programs with 25+ completers across 4 years in programs with similar CIP codes	1,501	654	295
Institution-dependent calculations			
Dividing total number of completers across all programs into proxy "programs" of 25	3,013	1,118	727
Institution-independent calculations			
Dividing all completers across all programs and institutions into proxy "programs" of 25	3,266	1,271	798

[1] The Department used the percentage of students across the institution as a whole enrolled exclusively via distance education as a proxy for the percentage of program completers in each program who were enrolled via distance education.

[2] The Department used the percentage of students across the institution as a whole enrolled via distance education in a State or jurisdiction other than the State or jurisdiction of the institution as a proxy for the percentage of program completers in each program who were enrolled via distance education.

[3] For purposes of this table, a "program" is defined using a six-digit CIP code and award level at a particular institution of higher education.

[4] The Department first determined programs with fewer than 25 program completers and then summed the completers across programs at the same institution with the same four-digit CIP code. This total was summed with the count in the "Programs with 25+ completers" row.

[5] The Department first determined programs with fewer than 25 completers and then multiplied the number of completers by 4 to determine whether a four-year aggregation of data would generate a sufficient program size. This total was summed with the count in the "Programs with 25+ completers" row.

Institutional Report Card Reporting Requirements

The proposed regulations would require that each IHE that conducts a traditional teacher preparation program or alternative route to State certification or licensure program and enrolls students who receive title IV, HEA funds, report to the State on the quality of its program using an institutional report card (IRC) prescribed by the Secretary. While the proposed regulations would shift the data IHEs report from the institutional level to the program level, the IRC would continue to be compiled, reported, and posted by the IHE. Given that the proposed regulations would not change the IHEs that are subject to IRC reporting requirements, we do not believe that there would be any increased costs associated with these proposed regulations above those already included in our estimates. Regardless of whether individual programs are offered via distance or not, we assume that those programs are already included in IRCs. Rather, the impact of the proposed regulations will be to increase the burden on States to report on additional programs that are not located in their States, not to increase the number of programs on which institutions are required to report.

State Report Card Reporting Requirements

Section 205(b) of the HEA requires each State that receives funds under the HEA to report annually to the Secretary on the quality of teacher preparation in the State, both for traditional teacher preparation programs and for alternative routes to State certification or licensure programs, and to make this report available to the general public. In the cost estimates included in the December 3, 2014 NPRM, the Department assumed it would take the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States, which include the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau 235 hours each to report the required data under the SRC. We estimate that the 812 additional instances of reporting that States would be required to report on under these proposed regulations would result in an 8 hour increase in the time it would take to complete such reports at an annual cost of $12,170. This 8 hour estimate is based on an increase in the time to complete the SRC proportional to the increase in the number of programs on which States will be required to report.

In the original NPRM, the Department also estimated costs associated with States' providing assurances whether each teacher preparation program in the State either: (a) Is accredited by a specialized accrediting agency recognized by the Secretary for accreditation of professional teacher education programs, or (b) provides teacher candidates with content and pedagogical knowledge and quality clinical preparation, and has rigorous teacher candidate entry and exit standards. See proposed § 612.5(a)(4)(i) and (ii), respectively. Using data from the Council for Accreditation of Educator Preparation (CAEP), the Department estimated that States would have to provide the assurances described in proposed § 612.5(a)(4)(ii) for 10,716 programs based at IHEs nationwide in addition to 2,688 programs not associated with IHEs. For purposes of determining the impact that the inclusion of distance education programs would have on this cost, we assume that distance education programs are just as likely as other IHE-based programs to be located at an IHE with specialized accreditation. As such, we estimate that States will have to provide these assurances on 390 of the 812 reporting instances for a total cost of $20,110 (2 hours per reporting instance for 390 reporting instances at $25.78 per hour). Further, we estimate that the annual reporting burden associated with this provision would cost approximately $2,510 (0.25 hours per reporting instance for 390 reporting instances at $25.78 per hour).

States would also be required to annually report on their classification of teacher preparation programs. We estimate that the inclusion of distance education programs in such reporting would increase the cost to States of reporting the classification they had determined for each distance education program by $10,470 (0.5 hours per reporting instance for 812 reporting instances at $25.78 per hour). Additionally, in response to public comment, we have included an additional item of cost in its estimates of the burden associated with the SRCs under the proposed regulations. The Department's estimates now include one hour per program annually for teacher preparation programs to review and verify the data that States will use for accountability purposes. We estimate that this review and verification for distance education programs will increase costs by $20,930 (1 hour per reporting instance for 812 reporting instances at $25.78 per hour).

The Department does not estimate any increase in costs (above those outlined in the December 2014 NPRM) associated with other elements of our initial estimates of the costs of the SRC related to the inclusion of distance education programs as all other estimated costs were flat costs associated with Statewide activities regardless of the number of programs being reported on.

Reporting Student Learning Outcomes

The Department's original estimates calculated the burden associated with reporting on student learning outcomes at the program level. We estimate that such reporting would take approximately 2.5 hours per program per State for a total additional annual cost of $52,330 to report on distance education programs.

Reporting Employment Outcomes

In the December 2014 NPRM, we also estimated costs associated with reporting employment outcomes at the program level. Assuming that such reporting would take 3.5 hours per program for 812 reporting instances, we estimate that such reporting would cost approximately $73,270.

Reporting Survey Results

Our December 2014 NPRM also proposed that States annually report on the results of teacher and employer surveys. At 1 hour per program, we estimate that such reporting on the 812 reporting instances would cost approximately $20,930 per year.

Reporting on Other Indicators

In the original NPRM, the Department did not account for costs associated with reporting on other indicators that the State may use to assess a program's performance beyond those that would be required by the proposed regulations. Our revised estimates include such costs. We now assume that such reporting will take, on average, 1 hour per program for an annual cost of approximately $20,930 for reporting on distance education programs.

We do not estimate that any other elements of our initial cost estimates not outlined above will increase as a result of these supplemental proposed regulations.

Accounting Statement

In the following table, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in annual monetized costs, benefits, and transfers as a result of the proposed regulations.

TABLE 2—ACCOUNTING STATEMENT

Category	Benefits	
Better and more publicly available information on the effectiveness of teacher preparation programs	Not Quantified	
Distribution of TEACH Grants to better performing programs	Not Quantified	
Category	Costs	
	7%	3%
Institutional Report Card (set-up, annual reporting, posting on website)	$0	$0
State Report Card (Statutory requirements: Annual reporting, posting on website; Regulatory requirements: Meaningful differentiation, consulting with stakeholders, aggregation of small programs, assurance of accreditation, other annual reporting costs)	66,190	66,190
Reporting Student Learning Outcomes (develop model to link aggregate data on student achievement to teacher preparation programs, modifications to student growth models for non-tested grades and subjects, and measuring student growth)	52,330	52,330
Reporting Employment Outcomes (placement and retention data collection directly from IHEs or LEAs)	73,270	73,270
Reporting Survey Results (developing survey instruments, annual administration, and response costs)	20,930	20,930
Reporting other indicators	20,930	20,930
Identifying TEACH Grant-eligible Institutions	0	0
Category	Transfers	
Reduced costs to the Federal government from TEACH Grants to prospective students at teacher preparation programs found ineligible	$0	$0

Paperwork Reduction Act of 1965

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 612.3, 612.4, 612.5, 612.6, 612.7, 612.8, and 686.2 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections to OMB for its review. A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number.

Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

Start-Up and Annual Reporting Burden

These proposed regulations execute a statutory requirement that IHEs and States establish an information and accountability system through which IHEs and States report on the performance of their teacher preparation programs. Parts of the proposed regulations in the original NPRM would require IHEs and States to establish or scale up certain systems and processes in order to collect information necessary for annual reporting. As such, IHEs and States may incur one-time start-up costs for developing those systems and processes associated with those proposed regulations. However, nothing in the proposed regulations in this supplemental NPRM would institute any such new requirements beyond those already contemplated in the original NPRM. We therefore do not report any start-up burdens associate with these proposed regulations.

Section 612.4—Reporting Requirements for the State Report Card

As outlined in the "Discussion of Costs, Benefits, and Transfers" section of this supplemental NPRM, the Department estimates that the inclusion of reporting on distance education programs in SRCs under § 612.4(a) will increase the reporting burden on States by approximately 8 hours each, for a total burden increase of 472 hours.

Under the proposed regulations, States would be required to classify teacher preparation programs each year. We estimate that such classification, using already-gathered indicator data and existing program classification methodologies would take approximately 0.5 hours per program. Applying such estimates to the 812 distance education programs, the total burden associated with classification of distance education programs would be 406 hours (812 programs multiplied by 0.5 hours per program). Aggregating the burdens calculated above, the Department estimates the total annual burden associated with these proposed rules under proposed § 612.4 to be 878 hours.

Section 612.5—Indicators a State Must Use To Report on Teacher Preparation Program Performance

The Department estimates that each State will require approximately 2.5 hours per program to gather and report data on student learning outcomes for distance education programs, for a total burden of 2,030 hours.

The Department estimates that each State will require 3.5 hours to compile, calculate, and transmit data on the employment outcomes of recent graduates of distance education programs, for a burden of 2,842 hours.

The Department estimates that each State will require 1 hour to report the results of their surveys of new teachers and their employers, for a total burden of 812 hours.

States would also be required to report on whether programs that do not have specialized accreditation meet certain program characteristics. The Department believes that it will take approximately 2 hours per program for a State to make such determinations and an additional 0.25 hours to report on such findings. As discussed in this Supplemental NPRM, the Department estimates that States will only have to do such reviews for 390 distance education programs, for a total of 878 hours.

The Department also estimates that each distance education program will require approximately 1 hour to review and verify State data regarding their program's performance, for a total of 812 hours.

Aggregating the calculated burdens in this section, the Department estimates that these proposed regulations will increase the calculated reporting burden associated with § 612.5 by 7,374 hours.

Total Reporting Burden Under Part 612

Aggregating the total burdens calculated under the preceding sections of part 612 results in the following burdens: total burden incurred under § 612.4 is 878 hours and under § 612.5 is 7,374 hours. This totals 8,252 hours nationwide.

We have prepared an Information Collection Request (ICR) for OMB collection 1840–0744. If you want to review and comment on the ICR [ICRs], please follow the instructions in the **ADDRESSES** section of this supplemental NPRM.

Note: The Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), and the Department of Education review all comments posted at *www.regulations.gov.*

In preparing your comments you may want to review the ICR, which is available at *www.regulations.gov* by using the Docket ID number specified in this supplemental NPRM and for which the comment period will run concurrently with the comment period of the NPRM.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond.

This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by May 2, 2016. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations in § 612.4 may have federalism implications, as defined in Executive Order 13132. We encourage State and local elected officials and others to review and provide comments on these proposed regulations.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT.**

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(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects

34 CFR Part 612

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: March 28, 2016.

John B. King, Jr.,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend 34 CFR part 612, as proposed to be added at 79 FR 71885, December 3, 2014, and part 686, as proposed to be amended at 79 FR 71889, December 3, 2014, as follows:

PART 612—TITLE II REPORTING SYSTEM

■ 1. The authority citation for part 612 continues to read as follows:

Authority: 20 U.S.C. 1022d, unless otherwise noted.

■ 2. Section 612.4 is amended by:

■ A. In paragraph (a)(1)(i), removing the words "including distance education programs" that appear after the punctuation ",";

■ B. Redesignating paragraph (a)(1)(ii) as paragraph (a)(1)(iii); and

■ C. Adding new paragraph (a)(1)(ii).

The addition reads as follows:

§ 612.4 What are the regulatory reporting requirements for the State Report Card?

(a) * * *

(1) * * *

(ii) The quality of all teacher preparation programs provided through distance education in the State, using procedures for reporting that are consistent with paragraph (b)(4) of this section, but based on whether the program produces at least 25 or fewer than 25 new teachers whom the State certified to teach in a given reporting year; and

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PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

■ 3. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.*, unless otherwise noted.

■ 4. Section 686.2 is amended by:

■ A. Adding in alphabetical order a definition of "High-quality teacher preparation program provided through distance education" to paragraph (e);

■ B. Revising the proposed definition of "TEACH Grant-eligible institution" in paragraph (e); and

■ C. Revising the proposed definition of "TEACH Grant-eligible program" in paragraph (e).

The additions and revisions read as follows:

§ 686.2 Definitions.

* * * * *

(e) * * *

High-quality teacher preparation program provided through distance education: A teacher preparation program provided through distance education that—

(i) For TEACH Grant program purposes in the 2021–2022 Title IV HEA award year, is not classified by any State as low-performing or at-risk of being low-performing under 34 CFR 612.4(b) in either or both the April 2020 and/or April 2021 State Report Cards, and for TEACH Grant program purposes in the 2022–2023 Title IV HEA award year and subsequent award years, is not classified by any State as low-performing or at-risk of being low-performing under 34 CFR 612.4(b), beginning with the April 2020 State Report Card, for two out of the previous three years; or

(ii) Meets the exception from State reporting of teacher preparation program performance under 34 CFR 612.4(b)(4)(ii)(D) or (E).

* * * * *

TEACH Grant-eligible institution: An eligible institution as defined in 34 CFR part 600 that meets financial responsibility standards established in 34 CFR part 668, subpart L, or that qualifies under an alternative standard in 34 CFR 668.175 and provides—

(i) At least one high-quality teacher preparation program or high-quality teacher preparation program provided through distance education at the baccalaureate or master's degree level that also provides supervision and support services to teachers, or assists in the provision of services to teachers, such as—

(A) Identifying and making available information on effective teaching skills or strategies;

(B) Identifying and making available information on effective practices in the supervision and coaching of novice teachers; and

(C) Mentoring focused on developing effective teaching skills and strategies;

(ii) A two-year program that is acceptable for full credit in a TEACH Grant-eligible program or a TEACH Grant-eligible STEM program offered by an institution described in paragraph (i) of this definition or a TEACH Grant-eligible STEM program offered by an institution described in paragraph (iii) of this definition, as demonstrated by the institution that provides the two year program;

(iii) A TEACH Grant-eligible STEM program and has entered into an agreement with an institution described in paragraph (i) or (iv) of this definition to provide courses necessary for its students to begin a career in teaching; or

(iv) A high-quality teacher preparation program or high-quality teacher preparation program provided through distance education that is a post-baccalaureate program of study.

TEACH Grant-eligible program: An eligible program, as defined in 34 CFR 668.8, that meets paragraph (i) of the definition of "high-quality teacher preparation program" or the definition of "high-quality teacher preparation program provided through distance education" and that is designed to prepare an individual to teach as a highly-qualified teacher in a high-need field and leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study. A two-year program of study that is acceptable for full credit toward a baccalaureate degree in a high-quality teacher preparation program or a high-quality teacher preparation program provided through distance education is considered to be a program of study that leads to a baccalaureate degree.

* * * * *

[FR Doc. 2016–07354 Filed 3–31–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2016–OESE–0015; CFDA Number: 84.004D.]

Proposed Priority and Requirement—Equity Assistance Centers (Formerly Desegregation Assistance Centers (DAC))

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priority and requirement.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) proposes a priority and a requirement under the Equity Assistance Centers (EAC) Program. The Assistant Secretary may use this priority and this requirement for competitions in fiscal year 2016 and later years. We take this action to encourage applicants with a track record of success or demonstrated expertise in socioeconomic integration strategies that are effective for addressing problems occasioned by the desegregation of schools based on race, national origin, sex, or religion. We intend for the priority and the requirement to help ensure that grant recipients have the capacity to increase socioeconomic diversity to create successful plans for desegregation and

to address special educational problems occasioned by bringing together students from different social, economic, and racial backgrounds.

DATES: We must receive your comments on or before May 2, 2016.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How to use regulations.gov."
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority and requirement, address them to Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E206, Washington, DC 20202–6135. Telephone: (202) 205–4513.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Britt Jung, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E206, Washington, DC 20202–6135. Telephone: (202) 205–4513 or by email: *britt.jung@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority and requirement, we urge you to identify clearly the specific issues that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority and requirement. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in Room 3E206, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: This program awards grants through cooperative agreements to operate regional EACs that provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools and in the development of effective methods of addressing special educational problems occasioned by desegregation.

Program Authority: 20 U.S.C. 1221e–3; 42 U.S.C. 2000c– 2000c–2 and 2000c–5.

Applicable Program Regulations: 34 CFR part 270 and 272.

Note: We published a notice of proposed rulemaking elsewhere in the **Federal Register** on March 24, 2016 (81 FR 15665) for the EAC program regulations in 34 CFR parts 270 and 272, which proposes to condense the regulations in 34 CFR parts 270 and 272 into one part, located at part 270.

Proposed Priority:

This notice contains one proposed priority.

A track record of success or demonstrated expertise in developing or providing technical assistance to increase socioeconomic diversity in schools or school districts as a means to further desegregation by race, sex, national origin, and religion.

Background:

Under section 403 of title IV of the Civil Rights Act of 1964 (42 U.S.C. 2000c–2), the Secretary is authorized, upon request, to render technical assistance in the preparation, adoption, and implementation of plans for the desegregation of public schools. We propose to add a priority to further the work of the EACs in the desegregation of public schools and, specifically, to promote socioeconomic diversity.

Sixty years after *Brown* v. *Board of Education,* data show that many schools and communities continue to suffer the effects of racial segregation, and that many of our Nation's largest school districts remain starkly segregated along racial and economic lines.[1] The widening gap between rich and poor has further concentrated areas of poverty that are in many cases also segregated communities of color.

Children living in concentrated poverty face overwhelming barriers to learning, placing a burden on high-poverty schools and contributing to poor academic and life outcomes for students.[2] In 2012, one-quarter of our Nation's students attended schools where more than 75 percent of the student body was eligible for free- or reduced-price lunch; in cities, almost half of all public school students attend high-poverty schools.[3] Moreover, more than one third of all American Indian/Alaska Native students and nearly half of all African-American and Latino students attend these high-poverty schools, highlighting the often inextricable link between racially and socioeconomically isolated schools and communities.

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[1] See, *e.g.,* National Center for Education Statistics. (2014). Digest of Education Statistics, Table 216.6. Retrieved from *http://nces.ed.gov/programs/digest/d14/tables/dt14_216.60.asp.*

[2] See, *e.g.,* Coleman, James S., Earnest Q. Campbell, Carol J. Hobson, James McPartland, Alexander M. Mood, Frederic D. Weinfeld, and Robert L. York. (1966). "Equality of Educational Opportunity." National Center for Education Statistics, U.S. Department of Education. Washington, DC. Retrieved from: *http://files.eric.ed.gov/fulltext/ED012275.pdf.*

Rumberger, Russell W., and Gregory J. Palardy. (September 2005). "Does Segregation Still Matter? The Impact of Student Composition on Academic Achievement in High School." Teachers College Record, Columbia University. Volume 107, Number 9, pp 1999–2045. Retrieved from: *http://www.learningace.com/doc/2775808/4a5b8639fd56f24cb076d144853d6b5f/rumberger-palardy-does-segregation-still-matter-tcr-2005.*

Aud, S., W. Hussar, M. Planty, T. Snyder, K. Bianco, M. Fox, L. Frohlich, J. Kemp, and L. Drake. (2010). "The Condition of Education 2010" (NCES 2010–028). National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Washington, DC: Government Printing Office. Retrieved from: *http://nces.ed.gov/pubs2010/2010028.pdf.*

Mulligan, G.M., S. Hastedt, and J.C. McCarroll. (2012). "First-Time Kindergartners in 2010–11: First Findings From the Kindergarten Rounds of the Early Childhood Longitudinal Study, Kindergarten Class of 2010–11" (ECLS–K:2011) (NCES 2012–049). National Center for Education Statistics, U.S. Department of Education. Washington, DC: Government Printing Office. Retrieved from: *https://nces.ed.gov/pubs2012/2012049.pdf.*

Ross, T., G. Kena, A. Rathbun, A. KewalRamani, J. Zhang, P. Kristapovich, and E. Manning. (2012). "Higher Education: Gaps in Access and Persistence Study" (NCES 2012–046). U.S. Department of Education, National Center for Education Statistics. Washington, DC: Government Printing Office. Retrieved from: *http://files.eric.ed.gov/fulltext/ED534691.pdf.*

Students attending high-poverty schools continue to have unequal access to—(1) advanced coursework; (2) the most effective teachers; and (3) necessary funding and supports.[4]

Moreover, research shows that States with less socioeconomically diverse schools tend to have larger achievement gaps between low- and higher-income students.[5]

The Department intends to continue our efforts to reduce racial isolation in public schools. However, given the growing body of research showing that socioeconomically diverse schools can lead to improved outcomes for disadvantaged students,[6] the Department plans to focus on increasing socioeconomic diversity in our Nation's schools. In addition, we believe the successful implementation of strategies to attract middle- and high-income students into high-poverty schools will create greater incentives for States and districts to provide better resources, opportunities, and supports in those schools.

Proposed Priority:

Eligible applicants that have a track record of success or demonstrated expertise in both of the following:

(a) Providing effective and comprehensive technical assistance on strategies or interventions supported by evidence and designed to increase socioeconomic diversity within or across schools, districts, or communities; and

(b) Researching, evaluating, or developing strategies or interventions supported by evidence and designed to increase socioeconomic diversity within or across schools, districts, or communities.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirement:

Background: To ensure the effective implementation of the proposed priority described in this notice, we propose to establish a program requirement to ensure that funded grantees conduct critical outreach with appropriate stakeholders.

The Assistant Secretary proposes the following requirement for this program. We may apply this requirement in any year in which this program is in effect.

Proposed Requirement:

Conducting Outreach and Engagement: When providing technical assistance on socioeconomic diversity in response to requests from responsible governmental agencies as a means to further desegregation by race, sex, national origin, and religion, a grantee under this program must assist in conducting outreach and engagement on strategies or interventions designed to increase socioeconomic diversity with appropriate stakeholders, including community members, parents and teachers.

Final Priority and Requirement: We will announce the final priority and requirement in a notice in the **Federal Register.** We will determine the final priority and requirement after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority or requirement, we invite applications through a notice in the **Federal Register.**

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this proposed regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

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[3] National Center for Education Statistics. (2014). Digest of Education Statistics, Table 216.6. Retrieved from *http://nces.ed.gov/programs/digest/d14/tables/dt14_216.60.asp.*

[4] See, *e.g.,* National Center for Education Statistics. (2013). Digest of Education Statistics, Table 225.40. Retrieved from: *http://nces.ed.gov/programs/digest/d13/tables/dt13_225.40.asp.*

Max, Jeffrey and Steven Glazerman (2014). "Do Disadvantaged Students Get Less Effective Teaching?" U.S. Department of Education, National Center for Education Evaluation and Regional Assistance. Washington, DC: Government Printing Office. Retrieved from: *http://ies.ed.gov/ncee/pubs/20144010/pdf/20144010.pdf.*

Gray, Lucinda, et al. Educational Technology in U.S. Public Schools: Fall 2008 (Apr. 2010) (NCES 2010–034). U.S. Department of Education, National Center for Education Statistics, available at: *http://nces.ed.gov/pubs2010/2010034.pdf.*

Wells, John, and Laurie Lewis. Internet Access in U.S. Public Schools and Classrooms: 1994–2005 (November 2006). U.S. Department of Education, National Center for Education Statistics, available at: *http://nces.ed.gov/pubs2007/2007020.pdf.*

[5] Mantil, Ann, Anne G. Perkins, and Stephanie Aberger. (February 27, 2012). "The Challenge of High Poverty Schools: How Feasible Is Socioeconomic School Integration?" In "The Future of School Integration," Kahlenberg, Richard D., ed. The Century Foundation. pp 155–222.

[6] Chetty, Raj, Nathaniel Hendren, and Lawrence F. Katz. (2015). *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment.* No. w21156. National Bureau of Economic Research; and Schwartz, Heather. (2012). "Housing Policy is School Policy: Economically Integrative Housing Promotes Academic Success in Montgomery County, Maryland." In *The Future of School Integration: Socioeconomic Diversity as an Education Reform Strategy, edited by* Richard D. Kahlenberg, 27–65. Century Foundation.

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this proposed priority and requirement only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 29, 2016.

Ann Whalen,

Senior Advisor to the Secretary Delegated the Duties of Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2016–07459 Filed 3–31–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–GOGA–19691; PX.XGOGA1604.00.1]

RIN 1024–AE16

Special Regulations, Areas of the National Park Service, Golden Gate National Recreation Area, Dog Management—Extension of Public Comment Period and Corrections

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; extension of public comment period; corrections.

SUMMARY: The National Park Service is extending the public comment period for the proposed rule to amend its special regulations for Golden Gate National Recreation Area regarding dog walking. Reopening the comment period for 30 days will allow more time for the public to review the proposal and submit comments. This document also corrects Table 4 to § 7.97 in the proposed rule by removing the designation of Ocean Beach as a Voice and Sight Control Area for walking four to six dogs that was included by an administrative error. The proposed rule also contained a typographical error in the email address for persons to contact the NPS for further information. The correct email address is *goga_dogmgt@nps.gov.*

DATES: The comment period for the proposed rule that published on February 24, 2016 (81 FR 9139), is extended. Comments must be received by 11:59 p.m. EDT on May 25, 2016.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE16, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments after searching for RIN 1024–AE16.
- *Mail or hand deliver to:* General Superintendent, Golden Gate National Recreation Area, Attn: Dog Management Proposed Rule, Fort Mason, Building 201, San Francisco, CA 94123.

Instructions: All submissions received must include the agency name and (RIN) 1024–AE16 for this rulemaking. Comments received will be posted without change to *www.regulations.gov,* including any personal information provided. If you commented on the Draft Dog Management Plan/ Supplemental Environmental Impact Statement (draft Plan/SEIS), your comment has been considered in drafting the proposed rule. Comments submitted during this comment period should focus on this proposed rule, not the draft Plan/SEIS. For example, the National Park Service invites comments on the definitions contained in the proposed rule and the clarity of the descriptions of areas open to dog walking; the rules and restrictions that apply to dog walking and to Voice and Sight Control areas; the rules and restrictions that apply to the permitting program for walking four to six dogs; and whether commercial dog walking should be allowed under the proposed rule. Comments on the draft Plan/SEIS will be considered untimely because the comment period on the draft Plan/SEIS has closed. Comments will not be accepted by fax, email, or in any way other than those specified above, and bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be considered. Organizations should direct their members to submit comments individually using one of the methods described above.

FOR FURTHER INFORMATION CONTACT: Golden Gate National Recreation Area, Attn: Public Affairs Office (Alexandra Picavet), Fort Mason, Building 201, San Francisco, CA, 94123. Phone: (415) 561–4728. Email: *goga_dogmgt@nps.gov.*

SUPPLEMENTARY INFORMATION:

Extension of Public Comment Period

On February 24, 2014, the National Park Service (NPS) published in the **Federal Register** (81 FR 9139) a proposed rule to amend its special regulations for Golden Gate National Recreation Area regarding dog walking. The 60-day public comment period for this proposal would have closed on April 25, 2016. In order to give the public additional time to review and comment on the proposal, we are extending the public comment period through May 25, 2016. If you already commented on the proposed rule you do not have to resubmit your comments.

To view comments received through the Federal eRulemaking portal, go to *http://www.regulations.gov* and enter 1024–AE16 in the search box. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information, we cannot guarantee that we will be able to do so. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Please make your comments as specific as possible and explain the basis for them.

Correction to Table 4

In the proposed rule on page 9150, make the following correction in Table 4 to § 7.97—Voice and Sight Control or On-Leash Dog Walking: Four to Six Dogs: Remove and reserve paragraph (E). This correction removes the designation of Ocean Beach as a Voice and Sight Control Area for walking four to six dogs, which was never intended to be designated this way and was included in Table 4 by an administrative error.

Correction of Email Address

In the proposed rule, on page 9140 in the first column, in the **FOR FURTHER INFORMATION CONTACT** section, correct the email address for interested parties to contact the NPS from "*goga_dogmtg@nps.gov*" to "*goga_dogmgt@nps.gov*".

Dated: March 23, 2016.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–07370 Filed 3–31–16; 8:45 am]

BILLING CODE 4310–EJ–P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bighorn Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Bighorn Resource Advisory Committee (RAC) will meet in Greybull, Wyoming. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found online at *http://bit.ly/1Lu2668.*

DATES: The meeting will be held Thursday, May 12, 2016, at 3:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Medicine Wheel District Office, 95 Highway 16/20, Greybull, Wyoming.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. Comments may alse be sent via email to *comments-bighorn@fs.fed.us,* with the words Bighorn RAC in the subject line. Facsimilies may be sent to 307–674–2668. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bighorn National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Christopher D. Jones, RAC Coordinator, by phone at 307–674–2627 or via email at *christopherdjones@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Update the RAC on the status of existing Title II projects, and
2. Consider project proposals for the current year.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by April 28, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Christopher D. Jones, RAC Coordinator, 2013 Eastside 2nd Street, Sheridan, Wyoming 82801; by email to *christopherdjones@fs.fed.us;* or via facsimile to 307–674–2668.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: March 28, 2016.

David Hogen,

Designated Federal Official.

[FR Doc. 2016–07421 Filed 3–31–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Pitkin County; Colorado; Snowmass Multi-Season Recreation Projects

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Aspen Skiing Company (ASC) has submitted a proposal to the White River National Forest (WRNF) to pursue approval of select projects from the 2015 Snowmass Mountain Master Development Plan (SMMDP) at Snowmass Ski Area (Snowmass). The WRNF has accepted this proposal and is initiating the preparation of an Environmental Impact Statement (EIS) to analyze and disclose the potential environmental effects of implementing the projects. The Proposed Action includes: Mountain biking and hiking trails; a mountain coaster; a canopy tour and zip line; a challenge course; a climbing wall; and multi-purpose activity areas.

DATES: Comments concerning the scope of the analysis must be received May 2, 2016. A public open house regarding this proposal will be held on April 7, 2016 from 6:00 p.m. to 8:00 p.m. at the Treehouse Kids Adventure Center, Eagle Peak Room (120 Lower Carriage Way, Snowmass Village, CO 81615). The venue is on the west end of the Base Village Plaza, just downhill of the Village Express Chairlift. The draft environmental impact statement is expected to be available for public review in summer 2016, and the final environmental impact statement is expected winter 2017.

ADDRESSES: Send written comments to: Scott Fitzwilliams, Forest Supervisor, c/o Roger Poirier, Project Leader, 900 Grand Avenue, Glenwood Springs, CO 81601, FAX: (970) 963–1012 (please include "Snowmass Multi-Season Recreation Projects" in the subject line).

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from: Roger Poirier, Project Leader. Mr. Poirier can be reached by phone at (970) 945–3245 or by email at *rogerepoirier@fs.fed.us*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

Interest in summer outdoor recreation at ski areas has grown nationwide in recent years, and is particularly visible in Colorado. Summer recreation activities have evolved to include a significant variety of opportunities and user experiences. Likewise, recreational use in the National Forests has evolved beyond the traditional activities and solitude-seeking experiences such as hunting, fishing, camping, or hiking.

Snowmass has been offering summer recreation opportunities since the 1990s and has utilized the Elk Camp area as the designated hub for these activities since 2009. The various programs currently offered have proven to be popular and well-received by guests. These opportunities primarily include dispersed activities, specifically lift-served hiking and mountain biking via the Elk Camp Gondola and Chairlift, and dispersed activities on multiple-use trails on the western side of the mountain.

The activities at Snowmass are fairly limited to a spectrum of visitors that have the physical ability and skillset to participate. There are few opportunities for developed recreation that enable guests without a particular level of skill or experience to engage in adventure or thrill-based experiences.

There is a desire to offer a range of experiences to engage current Forest users as well as encourage new users to visit and experience National Forest System (NFS) lands. Currently at Snowmass there is a lack of recreational opportunities that provide:

- Adventure or thrill-based experiences that require little specialized knowledge, skills, equipment or familiarity with the mountain environment—elements which can be a barrier for visitors (*e.g.,* families, the elderly/aging, or those with disabilities) desiring to engage in outdoor activities;
- Sufficient supply and variety of mountain biking trails serving a wide range of ability levels;
- Settings for educational and interpretive programs and events; and
- Activity-based interaction with a forested, mountain environment in a controlled setting, offering an opportunity for users to interact with and learn about nature.

There is a need for a broad and diverse mix of multi-season recreational activities that collectively provide the public with a range of outdoor activities from passive to active, intimate to interactive, and serve a range of personal interests, skills and abilities among guests.

Proposed Action

The Proposed Action includes the construction of the following elements:

- Approximately 16 miles of new mountain biking and hiking trails;
- A mountain coaster in the Elk Camp vicinity;
- A canopy tour near Elk Camp Meadows;
- A zip line down to the Gondola Turn Station;
- A challenge course in the Elk Camp Meadows area;
- A permanent climbing wall within the former Café Suzanne restaurant site;
- Multi-purpose activity areas.

A full description of each element can be found at *http://www.fs.usda.gov/project/?project=49057.*

Responsible Official

The Responsible Official is Scott Fitzwilliams, Forest Supervisor for the WRNF.

Nature of Decision To Be Made

Based on the analysis that will be documented in the forthcoming EIS, the Responsible Official will decide whether or not to implement, in whole or in part, the Proposed Action or another alternative that may be developed by the Forest Service as a result of scoping.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. A public open house regarding this proposal will be held on April 7, 2016 from 6:00 p.m. to 8:00 p.m. at the Treehouse Kids Adventure Center, Eagle Peak Room (120 Lower Carriage Way, Snowmass Village, CO 81615). The venue is on the west end of the Base Village Plaza, just downhill of the Village Express Chairlift. Continuous bus service is available via RFTA or TOSV bus systems, and free parking is available in the Base Village Parking Garage after 5:00 p.m. Representatives from the WRNF and ASC will be present to answer questions and provide additional information on this project.

To be most helpful, comments should be specific to the project area and should identify resources or effects that should be considered by the Forest Service. Submitting timely, specific written comments during this scoping period or any other official comment period establishes standing for filing objections under 36 CFR parts 218 A and B. Additional information and maps of this proposal can be found at: *http://www.fs.usda.gov/project/?project=49057.*

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: March 25, 2016.

Scott Fitzwilliams,

Forest Supervisor.

[FR Doc. 2016–07279 Filed 3–31–16; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wisconsin Advisory Committee To Discuss Approval of a Project Proposal To Hear Updated Testimony on Hate Crimes in the State

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Wisconsin Advisory Committee (Committee) will hold a meeting on Wednesday, April 27, 2016, at 12:00 p.m. CDT for the purpose of discussing approval of a project proposal to hear current testimony on hate crime in the state.

This meeting is open to the public through the following toll-free call-in number: 888–438–5525, conference ID: 2447433. Any interested member of the public may call this number and listen to the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are invited to make statements to the Committee during the scheduled open comment period. In addition, members of the public may submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://database.faca.gov/committee/meetings.aspx?cid=282.* Click on the "Meeting Details" and "Documents" links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Introductions—Naheed Bleecker, Chair

II. Hate Crimes and Civil Rights in Wisconsin—WI Advisory Committee
  - Discussion of proposal
  - Open Comment
  - Vote on approval of proposal

III. Future Plans and Actions—WI Advisory Committee

IV. Open Comment—Public Participation

V. Adjournment

DATES: The meeting will be held on Wednesday, April 27, 2016, at 12:00 p.m. CDT.

Public Call Information: Dial: 888–438–5525; Conference ID: 2447433.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at 312–353–8311 or *mwojnaroski@usccr.gov.*

Dated: March 28, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–07329 Filed 3–31–16; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Advisory Committees Expiration; Correction

AGENCY: United States Commission on Civil Rights.

ACTION: Solicitation of applications; correction.

SUMMARY: The U.S. Commission on Civil Rights published a document in the **Federal Register** of March 9, 2016, concerning the solicitation of applications for membership on the Nebraska, Hawaii, and California Advisory Committees. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: David Mussatt, Chief, Regional Programs Unit, 55 W. Monroe St., Suite 410, Chicago, IL 60603, (312) 353–8311.

Correction

In the **Federal Register** of March 9, 2016, in FR Doc. 2016–05193, on pages 12458–12459, in the second column, correct the first sentence of the second paragraph of the "Summary" caption to read:

Because the terms of the members of the Hawaii Advisory Committee are expiring on June 19, 2016, the United States Commission on Civil Rights hereby invites any individual who is eligible to be appointed to apply.

In the **Federal Register** of March 9, 2016, in FR Doc. 2016–05193, on pages 12458–12459, in the second column, correct the first sentence of the third paragraph of the "Summary" caption to read:

Because the terms of the members of the California Advisory Committee are expiring on June 19, 2016, the United States Commission on Civil Rights hereby invites any individual who is eligible to be appointed to apply.

Dated March 28, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–07301 Filed 3–31–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration.

Title: State and Local Implementation Grant Program Reporting Requirements.

OMB Control Number: 0660–0038.

Form Number(s): None.

Type of Request: Regular submission (extension of a currently approved information collection).

Number of Respondents: 54.

Average Hours per Response: Quarterly reports: 12.5 hours.

Burden Hours: 2,700.

Needs and Uses: The Middle Class Tax Relief and Job Creation Act of 2012 (Act, Pub. L. 112–96, 126 Stat. 156 (2012)) was signed by the President on February 22, 2012. The Act meets a long-standing priority of the Administration, as well as a critical national infrastructure need, to create a single, interoperable, nationwide public safety broadband network (NPSBN) that will, for the first time, allow police officers, fire fighters, emergency medical service professionals, and other public safety officials to effectively communicate with each other across agencies and jurisdictions. Public safety workers have long been hindered in their ability to respond in a crisis situation because of incompatible communications networks and often outdated communications equipment.

The Act establishes the First Responder Network Authority (FirstNet) as an independent authority within NTIA and authorizes it to take all actions necessary to ensure the design, construction, and operation of the NPSBN, based on a single, national network architecture.

The Act also charges NTIA with establishing a grant program, the State and Local Implementation Grant Program (SLIGP), to assist State, regional, tribal, and local jurisdictions with identifying, planning, and implementing the most efficient and effective means to use and integrate the infrastructure, equipment, and other architecture associated with the NPSBN to satisfy the wireless broadband and data services needs of their jurisdictions. The SLIGP program office awarded $116.5 million in grant funds to 54 active state and territorial recipients between July and September 2013. NTIA will use the collection of information to monitor and evaluate how SLIGP recipients are achieving the core purposes of the program established by the Act.

The original approval of the performance progress report form was obtained on August 1, 2013, and the current form has an expiration date of August 31, 2016. The publication of this notice allows NTIA to begin the process to extend the approval for the standard three years, with a minor adjustment to the wording on the form to more clearly indicate how recipients are to report each measure.

This request is for an extension (revision with change) of a current information collection.

Affected Public: State, regional, local, and tribal government organizations.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

NTIA published a Notice in the **Federal Register** on January 19, 2016, soliciting comments on this information collection, with a 60-day public comment period. NTIA did not receive any comments to this Notice.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: March 28, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–07324 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Chemical Weapons Convention (CWC) Declaration and Report Handbook and Forms.

Form Number(s): Form 1–1, Form 1–2, Form 1–2A, Form 1–2B, etc.

OMB Control Number: 0694–0091.

Type of Request: Regular.

Burden Hours: 14,813 hours.

Number of Respondents: 779 respondents.

Average Hours per Response: 10 minutes to 577 hours per response.

Needs and Uses: This information is required for the United States to comply with its obligations under the Chemical Weapons Convention (CWC), an international arms control treaty. The Chemical Weapons Convention Implementation Act of 1998 and Commerce Chemical Weapons Convention Regulations (CWCR) specify the rights, responsibilities and obligations for submission of declarations, reports and inspections.

Affected Public: Businesses and other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: March 29, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–07380 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department finds that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after April 2016, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its "Opportunity to Request Administrative Review" notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity To Request A Review: Not later than the last day of April 2016,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period of Review
Antidumping Duty Proceedings	
Russia: Solid Fertilizer-Grade Ammonium Nitrate, A–821–811	4/1/15–3/31/16
The People's Republic of China:	
Activated Carbon, A–570–904	4/1/15–3/31/16
Drawn Stainless Steel Sinks, A–570–983	4/1/15–3/31/16
Magnesium Metal, A–570–896	4/1/15–3/31/16
Non-Malleable Cast Iron Pipe Fittings, A–570–875	4/1/15–3/31/16
Steel Threaded Rod, A–570–932	4/1/15–3/31/16
Countervailing Duty Proceedings	
The People's Republic of China: Drawn Stainless Steel Sinks, C–570–984	1/1/15–12/31/15
Suspension Agreements	
None.	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) the Department clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Further, as explained in *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013), the Department clarified its practice with regard to the conditional review of the non-market economy (NME) entity in administrative reviews of antidumping duty orders. The Department will no longer consider the NME entity as an exporter conditionally subject to administrative reviews. Accordingly, the NME entity will not be under review unless the Department specifically receives a request for, or self-initiates, a review of the NME entity.[3] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, the Department will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity).

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[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] *See also* the Enforcement and Compliance Web site at *http://trade.gov/enforcement/.*

Following initiation of an antidumping administrative review when there is no review requested of the NME entity, the Department will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS") on Enforcement and Compliance's ACCESS Web site at *http://access.trade.gov*.[4] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of April 2016. If the Department does not receive, by the last day of April 2016, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 11, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–07450 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for May 2016

The following Sunset Reviews are scheduled for initiation in May 2016 and will appear in that month's Notice of Initiation of Five-Year Sunset Review ("Sunset Review").

	Department contact
Antidumping Duty Proceedings	
Certain Hot-Rolled Carbon Steel Flat Products from Russia (A–821–809) (3rd Review)	Jacqueline Arrowsmith (202) 482–5255.
Countervailing Duty Proceedings	
No Sunset Review of countervailing duty orders is scheduled for initiation in May 2016	
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in May 2016	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

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[3] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 11, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–07451 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating the five-year review ("Sunset Review") of the antidumping and countervailing duty ("AD/CVD") orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATE: *Effective Date:* April 1, 2016.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty orders:

DOC case No.	ITC case No.	Product	Contact	Department contact
A–507–502	731–TA–287	Iran	Certain in-Shell Raw Pistachios (2nd Review).	Jacqueline Arrowsmith (202) 482–5255.
A–570–967	731–TA–1177	PRC	Aluminum Extrusions (1st Review)	Jacqueline Arrowsmith (202) 482–5255.
C–570–968	701–TA–475	PRC	Aluminum Extrusions (1st Review)	Jacqueline Arrowsmith (202) 482–5255.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: "*http://enforcement.trade.gov/sunset/.*" All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

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[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) ("*Final Rule*") (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order ("APO") to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 29, 2016.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–07452 Filed 3–31–16; 8:45 am]

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[6] *See* 19 CFR 351.218(d)(1)(iii).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–044]

1, 1, 1, 2-Tetrafluoroethane From the People's Republic of China: Initiation of Less Than Fair Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 23, 2016.

FOR FURTHER INFORMATION CONTACT: Keith Haynes at (202) 482–5139, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 3, 2016, the Department of Commerce ("Department") received an antidumping duty ("AD") petition concerning imports of 1,1,1,2-Tetrafluoroethane ("R–134a") from the People's Republic of China ("PRC"), filed in proper form on behalf of the American HFC Coalition and its individual members,[1] as well as District Lodge 154 of the International Association of Machinists and Aerospace Workers ("IAMAW") (collectively, "Petitioners").[2]

On March 8, 2016, the Department requested additional information and clarification of certain areas of the Petition.[3] Petitioners submitted the requested information and clarification to the Department on March 11, 2016.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioners alleged that imports of R–134a from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties as defined in sections 771(9)(C),(D), and (F) of the Act. The Department also finds that Petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigation that Petitioners are requesting.[5]

Period of Investigation

Pursuant to 19 CFR 351.204(b)(1), because the Petition was filed on March 3, 2016, the period of investigation ("POI") is July 1, 2015 through December 31, 2015.

Scope of the Investigation

The product covered by this investigation is R–134a from the PRC. For a full description of the scope of this investigation, *see* the "Scope of the Investigation" in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, the Department issued questions to, and received responses from, Petitioners pertaining to the proposed scope to ensure that the scope language in the Petition would be an accurate reflection of the products for which the domestic industry is seeking relief.[6]

As discussed in the preamble to the Department's regulations,[7] we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by

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[1] The individual members of the American HFC Coalition are: Amtrol Inc., Arkema Inc., The Chemours Company FC LLC, Honeywell International Inc., Hudson Technologies, Mexichem Fluor Inc., and Worthington Industries, Inc.

[2] *See* Petition for the Imposition of Antidumping Duties on Imports of 1, 1, 1, 2-Tetrafluoroethane (R–134a) from the People's Republic of China, dated March 3, 2016 ("Petition").

[3] *See* the Department's letter to Petitioners, "Petition for the Imposition of Antidumping Duties on Imports of 1,1,1,2-Tetrafluoroethane (R–134a) from the People's Republic of China: Supplemental Questions," dated March 8, 2016 ("Supplemental Questionnaire").

[4] *See* Petitioners' response, "Petitioners' Response to the Department's March 8, 2016 Supplemental Questionnaire," dated March 11, 2016 ("Petition Supplement").

[5] *See* the "Determination of Industry Support for the Petition" section, below.

[6] *See* Supplemental Questionnaire and Petition Supplement.

[7] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

5:00 p.m. Eastern Time ("ET") on Tuesday, April 12, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on Friday, April 22, 2016, which is 10 calendar days after the initial comments deadline.

The Department requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS").[8] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of R–134a to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe R–134a, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all comments must be filed by 5:00 p.m. ET on Tuesday, April 12, 2016, which is twenty calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. ET on Tuesday, April 19, 2016, which is seven calendar days from the initial comments deadline. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the record of this investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[9] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[10]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that R–134a, as defined in the scope, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[11]

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[8] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[9] *See* section 771(10) of the Act.

[10] *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[11] For a discussion of the domestic like product analysis in this case, *see* the Department's memorandum, "Antidumping Duty Investigation Initiation Checklist: 1,1,1,2-Tetrafluoroethane from the People's Republic of China," ("Initiation Checklist") at Attachment II, Analysis of Industry Support for the Antidumping Duty Petition Covering 1,1,1,2-Tetrafluoroethane from the People's Republic of China ("Attachment II"). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in Appendix I of this notice. To establish industry support, Petitioners provided the 2015 production of the domestic like product by the members of the American HFC Coalition that produce R–134a in the United States (Arkema Inc., The Chemours Company FC LLC, and Mexichem Fluor Inc.).[12] Petitioners state that these three companies are the only known producers of R–134a in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[13]

Our review of the data provided in the Petition and other information readily available to the Department indicates that Petitioners have established industry support.[14] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[15] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[16] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[17] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (D), and (F) of the Act and they have demonstrated sufficient industry support with respect to the AD investigation that they are requesting the Department initiate.[18]

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[19]

Petitioners contend that the industry's injured condition is illustrated by reduced market share, underselling and price suppression or depression, adverse impact on capacity, capacity utilization, and employment, decline in shipments and output, negative impact on sales revenues and operating profits, and lost sales and revenues.[20] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[21]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less-than-fair value upon which the Department based its decision to initiate an investigation of imports of R–134a from the PRC. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Initiation Checklist.

Export Price

Petitioners based export price ("EP") on several sources in order to reflect the various packaging of R–134a.[22] First, Petitioners used price lists distributed to the service and replacement market by suppliers of Chinese R–134a.[23] Second, Petitioners relied on specific competitive quotes for sales in the U.S. market, by suppliers of the Chinese product that resulted in lost sales.[24] Third, the Petitioners relied on average unit values of R–134a imports from the PRC for the POI, based on official U.S. import statistics obtained from the ITC's DataWeb for the relevant HTSUS subheading for R–134a (HTSUS 2903.39.2020).[25] Fourth, Petitioners relied on internet price offers from suppliers in the PRC for the sale of merchandise to a U.S. customer during the period of investigation.[26] Finally, Petitioners relied upon trade statistics obtained from a proprietary source.[27] Where applicable, Petitioners made adjustments to the prices for cost, insurance, and freight charges and sales commissions/sales mark-ups.[28]

Normal Value

Petitioners note that, for purposes of the antidumping statute, the Department treats the PRC as a nonmarket economy ("NME") country.[29] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on factors of production ("FOPs") valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties, and the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners claim that Mexico is an appropriate surrogate country because it is a market economy that is at a level of economic development comparable to that of the PRC, it is a significant producer of comparable merchandise, and reliable surrogate factor data for Mexico are available.[30]

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[12] *See* Petition, at 7.

[13] *Id.*, at 7 and Exhibit I–1 (*1,1,1,2-Tetrafluoroethane from China*, Inv. Nos. 701–TA–509 and 731–TA–1244 (Final), USITC Pub. 4503 (December 2014), at 3 and III–1 through III–2).

[14] *See* Initiation Checklist, at Attachment II.

[15] *See* section 732(c)(4)(D) of the Act; *see also* Initiation Checklist, at Attachment II.

[16] *See* Initiation Checklist, at Attachment II.

[17] *Id.*

[18] *Id.*

[19] *See* Petition, at 25 and Exhibit II–1A.

[20] *Id.*, at 2–5, 17–19, 25–45 and Exhibits II–1 and II–3 through II–13.

[21] *See* Initiation Checklist, at Attachment III, "Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering 1,1,1,2-Tetrafluoroethane (R–134a) from the People's Republic of China."

[22] For further discussion regarding the prices used as the basis for export price, *see* Initiation Checklist.

[23] *See* Petition, at 54 and Exhibits II–6 and III–20; *see also* Petition Supplement, at 2–3 and Exhibit 2 and 7.

[24] *See* Petition, at 54 and Exhibits II–10 and III–20; *see also* Petition Supplement, at 2 and Exhibits 1, 2, and 7.

[25] *See* Petition, at 54–55 and Exhibit III–18 and III–20; *see also* Petition Supplement, at Exhibit 7.

[26] *See* Petition, at 54–55 and Exhibits III–19 and III–20; *see also* Petition Supplement, at 3 and Exhibit 7.

[27] *See* Petition Supplement, at Exhibit 2. Whereas Petitioners' initial margin calculations used the price average for only one month of this data, consistent with Department's past practice with respect to using average unit value data as the basis for U.S. price is to rely on data for the entire POI (or as many months of the POI as were available at the time the Petition was filed), we have recalculated Petitioners' submitted price using average unit values for the full POI. *See* Attachment V to the Initiation Checklist.

[28] *See* Petition, at 55–56 and Exhibits III–6, III–18, and III–20; *see also* Petition Supplement, at Exhibit 7.

[29] *See* Petition, at 46.

Based on the information provided by Petitioners, we consider it appropriate to use Mexico as the surrogate country for initiation purposes. Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

Factors of Production

Petitioners based the FOPs for materials, labor, and energy on the production experience of a domestic producer of R–134a, as they did not have access to the consumption rates of PRC producers of R–134a.[31] Petitioners state that the domestic producer's production process is the same as that of the Chinese producers.[32] Petitioners estimated FOPs for the purposes of calculating NV using surrogate prices sourced from Mexican import data, as applied to the domestic producer's reported factor usage rates.[33]

Valuation of Raw Materials

For direct materials, Petitioners valued these inputs based on publicly available Mexican import data obtained from the Global Trade Atlas ("GTA") for the period covering June 2015 through November 2015, the most recent POI-contemporaneous data available at the time the Petition was filed.[34] Petitioners excluded all import data from countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies, as well as countries previously determined by the Department to be NME countries.[35] In addition, in accordance with the Department's practice, Petitioners excluded imports that were labeled as originating from an unidentified country.[36] To calculate a surrogate value for anhydrous hydrogen fluoride, Petitioners excluded July 2015 imports from Germany from the full dataset for Mexican imports under HTS 2911.11.01 ("hydrogen fluoride (hydrofluoric acid), technical grade"), which they contend to be aberrational.[37] Petitioners converted the GTA import values from Mexican pesos to U.S. dollars using the POI-average exchange rate.[38]

Valuation of Labor

Petitioners valued labor using data specific to the "manufacture of other chemical products (ISIC-Rev.3)" in Mexico published by the International Labor Organization ("ILO").[39] Specifically, Petitioners based their calculations on 2008 Mexico ILO data for labor, which they inflated to be contemporaneous with the POI and converted from Mexican pesos to U.S. dollars using the POI exchange rate.[40]

Valuation of Packing Materials

Petitioners valued packing inputs using Mexican GTA import data for the period covering June 2015 to November 2015.[41]

Valuation of Energy

Petitioners calculated consumption rates for electricity based on the production experience of a domestic producer.[42] Petitioners valued electricity based on published data by the International Energy Agency ("IEA") for the most recent period for which data are available, *i.e.*, April 2015—September 2015.[43] Petitioners converted the electricity rates from Mexican pesos per kilowatt hour into U.S. dollars per kilowatt hour.[44] Additionally, Petitioners calculated consumption rates of natural gas based on the production experience of a domestic producer.[45] Petitioners converted the natural gas consumption rate calculation from a million BTU to a kilogram basis and then converted the natural gas rates from Mexican pesos into U.S. dollars.[46]

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioners calculated surrogate financial ratios (*i.e.*, manufacturing overhead, selling, general and administrative expenses, and profit) based on the 2014 financial statements of Mexichem S.A.B. de C.V., a producer of hydrogen fluoride (the major raw material used in R–134a production) in Mexico, and CYDSA, whose subsidiary company—Quimobasicos S.A. de C.V—produces comparable merchandise (R–22) in Mexico.[47]

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of R–134a from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV, in accordance with section 773(c) of the Act, the estimated dumping margins for R–134a from the PRC range from 153.68 to 220.87 percent.[48]

Initiation of Less-Than-Fair-Value Investigation

Based upon the examination of the AD Petition on R–134a from the PRC, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of R–134a from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made certain amendments to the AD and CVD law.[49] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[50] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this AD investigation.[51]

Respondent Selection

Petitioners named thirty-three companies from the PRC as producers/

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[30] *Id.*, at 47–49 and Exhibits III–1 through III–4.

[31] *Id.*, at 50 and Exhibit II–6; *see also* Petition Supplement, at 4–5 and Exhibit 3.

[32] *See* Petition, at 50 and Exhibit II–12.

[33] *Id.*, at 50 and Exhibit III–7

[34] *Id.*, at 50–51 and Exhibit III–8.

[35] *Id.*, at 51.

[36] *Id.*, at Exhibit III–8.

[37] *Id.*, at 51–52 and Exhibits III–11 and III–12; *see also* Petition Supplement, at 5–6 and Exhibit 4 .

[38] *See* Petition, at 51; *see also* Petition Supplement, at 6 and Exhibits 5 and 6.

[39] *See* Petition, at 53 and Exhibit III–14.

[40] *Id.*, at Exhibit III–8; *see also* Petition Supplement, at Exhibit 6.

[41] *See* Petition, at Exhibit III–14.

[42] *Id.*, at 52 and Exhibit III–13.

[43] *Id.*

[44] *Id.*, at 53; *see also* Petition Supplement, at Exhibit 6.

[45] *See* Petition, at Exhibit III–5.

[46] *Id.*, at Exhibit III–6.

[47] *Id.*, at 53–54 and Exhibits III–15 through III–17.

[48] *See* Petition Supplement, at 7 and Exhibit 7; *see also* Initiation Checklist, at Attachment V "Revised Margin Calculation".

[49] *See* Trade Preferences Extension Act of 2015, Pub. L. 114–27, 129 Stat. 362 (2015).

[50] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015).

[51] *Id.*, at 46794–95. The 2015 amendments may be found at: *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

exporters of R–134a.[52] Consistentwith our practice for respondent selection in cases involving NME countries, we intend to issue quantity and value ("Q&V") questionnaires to potential respondents and base respondent selection on the responses received. In addition, the Department will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance Web site at *http://www.trade.gov/enforcement/news.asp.*

Exporters/producers of R–134a from the PRC that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement and Compliance Web site. The Q&V response must be submitted by the relevant PRC exporters/producers no later than April 6, 2016, which is two weeks from the signature date of this notice. All Q&V responses must be filed electronically via ACCESS.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.[53] The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate-rate application will be due 30 days after publication of this initiation notice.[54] Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that respondents from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[55]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the government of the PRC via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of R–134a from the PRC are materially injuring or threatening material injury to a U.S. industry.[56] A negative ITC determination will result in this investigation being terminated;[57] otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[58] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[59] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. *Review Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[60] Parties are hereby reminded that revised certification requirements are in effect

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[52] *See* Petition, at 17 and Exhibit I–9.

[53] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at: *http://enforcement.trade.gov/policy/bull05-1.pdf* ("Policy Bulletin 05.1").

[54] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

[55] *See* Policy Bulletin 05.1, at 6.

[56] *See* section 733(a) of the Act.

[57] *Id.*

[58] *See* 19 CFR 351.301(b).

[59] *See* 19 CFR 351.301(b)(2).

[60] *See* section 782(b) of the Act.

for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Certification Final Rule*.[61] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order ("APO") in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 23, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R–134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-Tetrafluoroethane is CF_3-CH_2F, and the Chemical Abstracts Service registry number is CAS 811–97–2.[62]

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

[FR Doc. 2016–07316 Filed 3–31–16; 8:45 am]

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[61] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) ("*Certification Final Rule*"); *see also* frequently asked questions regarding the *Certification Final Rule*, available at: *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[62] 1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Freon™ 134a, Suva 134a, Dymel 134a, and Dymel P134a (Chemours); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-Tetrafluoroethane has been sold as Fluorocarbon 134a, R–134a, HFC–134a, HF A–134a, Refrigerant 134a, and UN3159.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE524

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application submitted by the Northeast Fisheries Science Center contains all of the required information and warrants further consideration.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on Exempted Fishing Permit applications.

DATES: Comments must be received on or before April 18, 2016.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line "Comments on NEFSC Study Fleet EFP."
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on NEFSC Study Fleet EFP."

FOR FURTHER INFORMATION CONTACT: Daniel Luers, Fishery Management Specialist, 978–282–8457, *Daniel.Luers@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Northeast Fisheries Science Center (NEFSC) submitted a complete application for an Exempted Fishing Permit (EFP) on March 4, 2016, to enable data collection activities that the regulations on commercial fishing would otherwise restrict. The EFP would exempt 36 federally permitted commercial fishing vessels from the regulations detailed below while participating in the Study Fleet Program and operating under projects managed by the NEFSC. The EFP would exempt participating vessels from: Minimum fish size restrictions; fish possession limits for species not protected under the Endangered Species Act (ESA); gear-specific fish possession restrictions for the purpose of at-sea sampling; and, in limited situations for research purposes only, retaining and landing prohibited fish species.

The NEFSC Study Fleet Program was established in 2002 to more fully characterize commercial fishing operations and to leverage sampling opportunities to augment NMFS data collection programs. Participating vessels are contracted by NEFSC to collect tow-by-tow catch and environmental data, and to fulfill specific biological sampling needs identified by NEFSC. To collect these data, the NEFSC Study Fleet Program has obtained an EFP to secure the necessary waivers needed by the vessels to possess and land fish that would otherwise be prohibited by regulations.

Fishing vessel crews trained by the NEFSC Study Fleet Program would sort, weigh, and measure fish that are to be discarded. In the course of sampling, some discarded species would be on deck slightly longer than under normal sorting procedures, which requires an exemption from the following restrictions: Minimum fish size; fish possession limits; prohibited fish species, not including species protected under the ESA; and gear-specific fish possession restrictions for at-sea sampling.

Participating vessels would also be authorized to retain and land, in limited situations for research purposes only, fish species and/or sizes that are not in compliance with fishing regulations. The vessels would be authorized to retain specific amounts of particular species in whole or round weight condition, which would be delivered upon landing to Study Fleet Program technicians. To ensure that the collection needs of the Study Fleet Program are not exceeded, NEFSC would require participating vessels to obtain a formal Biological Sampling Request from the NEFSC Study Fleet Program prior to landing any sublegal fish. None of the landed biological samples from these trips would be sold for commercial use or utilized for any purpose other than scientific research.

The table below details the regulations from which the participating vessels would be exempt when retaining and landing fish for research purposes. The participating vessels would be obligated to comply with all applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP. All catch would be attributed to the appropriate commercial fishing quota. For vessels on a groundfish sector trip, all catch of Northeast multispecies stocks allocated to sectors would be deducted from the Annual Catch Entitlement (ACE) for that sector. Once the ACE for a stock has been reached in a sector, vessels would no longer be allowed to fish in that stock area, unless they acquired additional ACE for the limiting stock. For common pool vessels, all catch of Northeast multispecies stocks would be counted toward the appropriate quotas. Common pool vessels would be subject to applicable trimester total allowable catch (TAC) accountability measures. When 90 percent of the trimester TAC for a stock is projected to be caught, the area where that stock is predominantly caught will be closed to common pool vessels fishing with gear capable of catching that stock for the rest of that trimester.

NEFSC Study Fleet Program EFP

No. of Vessels	37
Exempted regulations in 50 CFR part 648.	*Size limits* § 648.83 NE multispecies minimum sizes. § 648.93 Monkfish minimum fish size. § 648.147 Black sea bass minimum fish size. *Possession restrictions* § 648.86(a) Haddock. § 648.86(b) Atlantic cod. § 648.86(c) Atlantic halibut. § 648.86(d) Small-mesh multispecies. § 648.86(l) Zero retention of Atlantic wolffish and windowpane flounder. § 648.86(o) Possession limits implemented by Regional Administrator. § 648.94 Monkfish possession limit. § 648.322 Skate possession and landing restrictions. § 648.145 Black sea bass possession limits. § 648.92(b)(2)(i) Prohibition from landing NE multispecies on monkfish-only day-at-sea.

NEFSC Study Fleet Program Biological Sampling Needs

As described above, biological samples would only be landed and collected by the Study Fleet Program after a formal request has been issued in writing by the Study Fleet Program. The following are the Study Fleet Program's sampling needs.

Windowpane flounder—whole fish would be retained for age and growth research. Otoliths and fish length would be collected to validate ages using marginal increment analysis. Windowpane flounder retained would not exceed 40 fish per month from all stock areas combined (Gulf of Maine (GOM) and Georges Bank (GB) stock) or 480 fish total for all trips. The maximum weight on any trip would not exceed 30 lb (13.6 kg), and total weight would not exceed 360 lb (163.3 kg) for all trips combined.

Atlantic wolffish—whole fish would be retained for maturity, fecundity, and life history research. Atlantic wolffish retained would not exceed 40 fish per month or 480 fish total for all trips. The maximum weight on any trip would not exceed 160 lb (72.6 kg), and total weight would not exceed 3,500 lb (1,587.6 kg) for all trips combined.

Cusk—whole fish would be retained or specimen sampled at sea by a Study Fleet scientist for maturity, fecundity, and life history research. Cusk retained would not exceed 40 fish per month or 480 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.4 kg), and total weight would not exceed 1,440 lb (653.2kg) for all trips combined.

Atlantic halibut—specimens would be sampled at sea by a Study Fleet scientist for age, growth, maturity, fecundity, and diet research. Atlantic halibut retained would not exceed 20 fish per month or 240 fish total for all trips. The maximum weight on any trip would not exceed 200 lb (90.7 kg), and total weight would not exceed 5,000 lb (2,268 kg) for all trips combined.

Monkfish—whole fish would be retained for maturity and fecundity research. Monkfish retained would not exceed 10 fish per month or 120 fish total for all trips. The maximum weight on any trip would not exceed 100 lb (45.4 kg), and total weight would not exceed 1,200 lb (544.3 kg) for all trips combined.

Haddock—whole fish would be retained for maturity and fecundity research. Haddock retained would not to exceed 40 fish per month or 360 fish total for all trips. The maximum weight on any trip would not exceed 180 pounds (81.6 kg), and total weight would not exceed 1,440 pounds (653.2 kg) for all trips combined.

Atlantic cod—whole fish would be retained for potential maturity, fecundity, bioelectrical impedance analysis (BIA), food habits, and genetic research. Atlantic cod retained would not exceed 200 fish per month from each of the three stock areas (GOM, GB, Southern New England/Mid-Atlantic), or 1,200 fish total from each stock area for all trips. The maximum weight on any trip would not exceed 300 lb (136.1 kg), and total weight would not exceed 8,500 lb (3,855.5 kg) for all trips combined.

Barndoor Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. Barndoor skates retained would not exceed 20 fish per 3-month period, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34 kg), and total weight would not exceed 300 lb (136.1 kg) for all trips combined.

Thorny Skate—whole and, in some cases, live skates would be retained for age and growth research and species confirmation. Thorny skates retained would not exceed 20 fish per 3-month period, or 80 skates total for all trips. The maximum weight on any trip would not exceed 75 lb (34 kg) whole weight, and total weight would not exceed 300 lb (136.1 kg) for all trips combined.

Black Sea Bass—whole fish would be retained in support of an ongoing study at NEFSC to evaluate BIA as a means to measure fish energy density and reproductive potential for stock assessment. Black sea bass retained would not exceed 75 fish per 3- month period, or 300 black sea bass total for all trips. The maximum weight on any trip would not exceed 250 lb (113.4 kg), and total weight would not exceed 1,000 lb (453.6 kg) for all trips combined.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impact that does not change the scope of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 29, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07399 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–22–P

7

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Renewal of the Advisory Committee on Commercial Remote Sensing

ACTION: Notice of renewal of the Advisory Committee on Commercial Remote Sensing.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR part 101–6, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Advisory Committee on Commercial Remote Sensing (ACCRES) is in the public interest in connection with the performance of duties imposed on the Department by law. ACCRES was renewed on March 9, 2016.

SUPPLEMENTARY INFORMATION: The Committee was first established in May 2002, to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote-sensing industry and NOAA's activities to carry out the responsibilities of the Department of Commerce set forth in the National and Commercial Space Programs Act of 2010 (The Act) Title 51 U.S.C. 60101 *et seq.* (formerly the Land Remote Sensing Policy Act of 1992 15 U.S.C. Secs. 5621–5625).

ACCRES will have a fairly balanced membership consisting of approximately 9 to 20 members serving in a representative capacity. All members should have expertise in remote sensing, space commerce or a related field. Additionally, ACCRES may include members from government to assist in providing guidance on regulations and space policy. Each candidate member shall be recommended by the Assistant Administrator and shall be appointed by the Under Secretary for a term of two years at the discretion of the Under Secretary.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. Copies of the Committee's revised Charter have been filed with the appropriate committees of the Congress and with the Library of Congress.

FOR FURTHER INFORMATION CONTACT: Samira Patel, Commercial Remote Sensing Regulatory Affairs Office, NOAA Satellite and Information Services, 1335 East-West Highway, Room 8247, Silver Spring, Maryland 20910; telephone (301) 713–7077, email *samira.patel@noaa.gov.*

Stephen M. Volz,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 2016–07349 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE544

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a three-day meeting to discuss the items contained in the following agenda:

DATES: The meetings will be held on April 19 through April 21, 2016.

ADDRESSES: The meetings will be held at the Council' Office, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council's SSC will hold a three-day meeting to discuss the items contained in the following agenda:

April 19–21, 2016, 9 a.m. to 5 p.m.

—Call to Order
—Adoption of Agenda
—SEDAR 46 U.S. Caribbean Data Limited Species Review—SEFSC
—Island Based Fishery Management
  —Review Goals and Objectives of the IBFMPs
  —Review Action 1: Species Selection
  —Action 2
  —Review Consolidated list of stocks and stock complexes
  —Species Complexes—SERO Update
  —Recommendations to CFMC
—Future Action 3: Reference Points
  —ABC Control Rule
—5 year CFMC Research Plan
  —Finalize 5-year Research Plan
—Other Business

Special Accommodations

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: March 29, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07408 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE545

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico and South Atlantic Fishery Management Councils will hold a Joint Spiny Lobster Advisory Panel (AP) meeting.

DATES: The meeting will convene on Monday, April 25, 2016, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Marriott Key Largo Bay hotel, 103800 Overseas Highway, Mile Marker 103.8, Key Largo, FL 33037; telephone: (305) 453–0000.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Morgan Kilgour, Fishery Biologist, Gulf of Mexico Fishery Management Council; *morgan.kilgour@gulfcouncil.org,* telephone: (813) 348–1630; and Kari Maclauchlin, Fishery Social Scientist; *kari.maclauchlin@safmc.net,* telephone: (843) 571–4366.

SUPPLEMENTARY INFORMATION:

Agenda

The meeting will begin with election of a chair and vice chair for the Gulf advisory panel (AP); the South Atlantic AP will hold elections later in the meeting. The first item on the agenda is to review spiny lobster landings and the reports from the 2015 and the 2016 Review Panels. The APs will discuss annual catch target and annual catch limit overages and will be presented with an overview of different metrics that could be used to calculate new metrics. The APs will be presented with spiny lobster fishery issues. The APs will review and discuss the spiny lobster closed areas established in Amendment 11 and will review the proposed coral habitat areas of particular concern for the Gulf Council. The final agenda item is other business.

—Meeting Adjourns—

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on the Council's file server. To access the file server, the URL is *https://public.gulfcouncil.org:5001/webman/index.cgi,* or go to the Council's Web site and click on the FTP link in the lower left of the Council Web site (*http://www.gulfcouncil.org*). The username and password are both "gulfguest". Click on the "Library Folder", then scroll down to "Joint Spiny Lobster AP meeting-2016–04".

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's Web site, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: March 29, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–07409 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Greater Atlantic Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 31, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Elizabeth Scheimer, Greater Atlantic Regional Fisheries Office, 55 Great Republic Dr., Gloucester, MA 01930, (978) 281–9236, *Elizabeth.scheimer@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection. Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to NOAA's National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect information from users of the resources.

The Secretary has enacted rules to issue permits to individuals and organizations participating in federally controlled fisheries. Permits are necessary to: (1) Register fishermen, fishing vessels, fish dealers and processors; (2) list the characteristics of fishing vessels and/or dealer/processor operations; (3) exercise influence over compliance (*e.g.,* withhold issuance pending collection of unpaid penalties); (4) maintain contact lists for the dissemination of important information to the industry; (5) register participants to be considered for limited entry; and (6) provide a universe for data collection samples. Identification of fishery participants, their gear types, vessels, and expected activity levels is an effective and necessary tool in the enforcement of fishery regulations.

This collection also includes the requirement for participants in certain fisheries to use onboard vessel monitoring systems (VMS) and to notify NMFS before fishing trips for the purpose of observer placement. Other permitting in this collection includes the written request to participate in any of the various exemption programs offered in the Greater Atlantic region. Exemption programs may allow a vessel to fish in an area that is limited to vessels of a particular size, using a certain gear type, or fishing for a particular species. This collection also contains paperwork required for vessel owners to request gillnet and lobster trap tags through the Greater Atlantic region permit office.

Lastly, vessel owners that own multiple vessels, but would like to request communication from NMFS be consolidated into one mailing (and not separate mailings for each vessel), may request the single letter vessel owner option to improve efficiency of their business practice.

II. Method of Collection

Vessel Permits

All vessel permit applications, including permit applications and renewals for vessels, dealers, and vessel operators, as well as gillnet and lobster trap tag purchase, are submitted by signed paper form sent in the mail.

VMS Requirements

Vessels with VMS requirements are required to declare their intent to fish (*e.g.,* declare into the fishery) and submit daily catch reports using electronic VMS units on board the vessel. Other VMS actions may include trip start and end hails, pre-landing notifications, and days-at-sea (DAS) adjustments. VMS power down exemption requests are submitted by signed paper form.

Observer Program Call-in Requirements

Vessels issued certain permits such as Northeast multispecies, monkfish, scallop, and Atlantic herring permits are required to give advance notification to the Northeast Fisheries Observer Program (NEFOP) before the start of a trip in order to receive a fisheries observer or a waiver. Vessels use an online pre-trip notification system, email, toll-free call-in number, or a local phone number to comply with this requirement.

Exempted Fisheries Programs

Vessels that would like to request participation in one or more of the Greater Atlantic region fisheries exemption programs must either submit a request electronically using their VMS unit, by declaring into an exempted fishery prior to the start of a trip, or by mailing in a written request to participate in the program(s) of interest.

Vessel Owner Single Letter Option

Vessel owners that own multiple vessels, but would like to receive only a single Greater Atlantic Fisheries Bulletin or small entity compliance guide instead of one for each vessel permit, must submit a written request to NMFS to participate in this program.

III. Data

OMB Control Number: 0648–0202.

Form Number(s): None.

Type of Review: Regular (extension of a current information collection).

Affected Public: Businesses and other for-profit organizations are primarily affected. Individuals or households, state, local or tribal governments, and the Federal Government are also affected.

Estimated Number of Respondents: 62,295.

Estimated Time per Response:

Vessel Permits

Vessel permit application: 45 minutes; vessel permit renewal forms: 30 minutes; initial dealer permit applications: 15 minutes; dealer permit renewal forms: 5 minutes; initial and renewal vessel operator permit applications: 1 hour; obtaining and submitting a dealer or vessel owner email address: 5 minutes; limited access vessel replacement applications: 1.5 hours; and applications for retention of limited access permit history: 1.5 hours.

VMS Requirements

Installing a VMS unit: 1 hour; confirming VMS connectivity: 5 minutes; VMS certification form: 5 minutes; VMS installation for Canadian herring transport vessels: 1 hour and 20 minutes; email to declare their entrance and departure from U.S. waters: 15 minutes; automatic polling of vessel position using the VMS unit: 0 minutes; area and DAS declarations: 5 minutes; declaration of days-out of the gillnet fishery for monkfish and NE multispecies vessels: 5 minutes; Good Samaritan DAS credit request: 30 minutes; entangled whale DAS credit request: 30 minutes; DAS credit for a canceled trip due to unforeseen circumstances, but have not yet begun fishing: 5 minutes to request via the VMS unit and 10 minutes to request via the paper form; VMS catch reports: 5 minutes; VMS power down exemption: 30 minutes.

Observer Program Call-in Requirements

Requests for observer coverage are estimated to require either 2 or 10 minutes per request, depending on the program for which observers are requested.

Exempted Fisheries Programs

Letter of Authorization (LOA) to participate in any of the exemption programs: 5 minutes; Charter/Party Exemption Certificate for GOM Closed Areas: 5 minutes; limited access sea scallop vessels state waters DAS exemption program or state waters gear exemption program: 2 minutes; withdraw from either state waters exemption program prior to the end of the 7-day designated exemption period requirement: 2 minutes; request for change in permit category designation: 5 minutes; request for transit to another port by a vessel required to remain within the GOM cod trip limit: 2 minutes; gillnet category designation, including initial requests for gillnet tags: 10 minutes; requests for additional tags: 2 minutes; notification of lost tags and requests for replacement tag numbers: 2 minutes; attachment of gillnet tags: 1 minute; initial lobster area designations: 5 minutes; requests for additional tags: 2 minutes; and notification of lost tags: 3 minutes; requests for state quota transfers in the bluefish, summer flounder and scup fisheries: 1 hour; GOM cod trip limit exemption: 5 minutes; vessel owner single letter option: 5 minutes.

Estimated Total Annual Burden Hours: 22,071.

Estimated Total Annual Cost to Public: $2,633,647 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–07367 Filed 3–31–16; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services previously provided by such agencies.

DATES: *Comments Must Be Received on or Before:* 5/1/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to provide the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following services are proposed for addition to the Procurement List for provision by the nonprofit agencies listed:

Services:

Service Type: Janitorial Service
Service Mandatory for: Library of Congress, Fort Meade Collection Storage Modules, Fort Meade, MD
Mandatory Source(s) of Supply: Goodwill Industries of the Chesapeake, Inc., Baltimore, MD
Contracting Activity: Library of Congress, Fedlink Contracts, Washington, DC

Service Type: Custodial Service
Service Mandatory for: National Park Service NE Region, Tri-Site Maintenance Facility, Olmsted, Kennedy & Longfellow/Washington National Historical Park, Boston, MA
Mandatory Source(s) of Supply: Community Workshops, Inc., Boston, MA
Contracting Activity: Dept. of the Interior, National Park Service, NER NE MABO, Boston, MA

Deletions

The following services are proposed for deletion from the Procurement List:

Services:

Service Type(s): Recycling Service, Pest Control Service, Furnishings Management Service
Service Mandatory for: Offutt Air Force Base, Offutt, NE
Mandatory Source(s) of Supply: Goodwill Specialty Services, Inc., Omaha, NE
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Service Type: Janitorial/Custodial Service
Service Mandatory for: Fairchild Air Force Base: Base and Survival School Buildings 2249C, 1224, 1302, 1306, 1336, 1344, 1348, 2248D, 2301, 2451A, 1212, 1228, 1324, 1334, 1342 and 1207 OSI Building 5025 and the Social Actions Building 3509, Fairchild AFB, WA
Mandatory Source(s) of Supply: Skils'kin, Spokane, WA
Contracting Activity: Dept. of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–07429 Filed 3–31–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 5/1/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 1/29/2016 (81 FR 5009) and 2/26/2016 (81 FR 9811–9812), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products:

NSN(s)—Product Name(s): MR 1188—MR Towel Set, Christmas, Includes Shipper 11188
Mandatory Source of Supply: Alphapointe, Kansas City, MO
NSN(s)—Product Name(s): MR 10659—Container Set, Soup and Salad, Includes Shipper 20659
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
NSN(s)—Product Name(s): MR 849—Whisk, Wire Looped
Mandatory Source of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Mandatory Purchase For: Military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4.
Contracting Activity: Defense Commissary Agency
Distribution: C-List

Service:

Service Type: Administrative and Professional Support Service
Service Mandatory For: Executive Office of the President, Washington, DC
Mandatory Source of Supply: Columbia Lighthouse for the Blind, Washington, DC
Contracting Activity: Executive Office of the President, Office of Administration, Office of the Chief Financial Officer, Procurement Division, Washington, DC

Deletions

On 2/26/2016 (81 FR 9811–9812), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products:

NSN(s)—Product Name(s)
MR 523—Candle, Air Freshening, Potpourri
MR 524—Candle, Air Freshening, Dewdrop
MR 525—Candle, Air Freshening, Rose
MR 526—Candle, Air Freshening, Mulberry
MR 528—Candle, Air Freshening, Wildflower
MR 529—Candle with Glass Holder
MR 531—Candle, Air Freshening, Peach
Mandatory Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi,

TX
MR 808—Spoon, Basting, SS Trim
MR 811—Fork, Serving, SS Trim
MR 824—Mandolin Slicer
MR 987—Towel, Super Absorbent, Orange, 20″ x 23″, 3 Pack
Mandatory Source of Supply: Industries for the Blind, Inc., West Allis, WI
MR 1049—Mop, Microfiber, 16″
MR 1059—Refill, Mop, Microfiber, 16″
Mandatory Source of Supply: Alphapointe, Kansas City, MO
MR 3209—Goody Hair Care Products—Ouchless Latex Elastic
Mandatory Source of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity: Defense Commissary Agency

NSN(s)—Product Name(s)
6515–01–466–2710—Combat Arms Ear Plug, Dual Ended, Universal Size
6515–00–SAM–0016—Combat Arms Ear Plug, Dual Ended
Mandatory Source of Supply: Access: Supports for Living Inc., Middletown, NY
Contracting Activity: Defense Logistics Agency Troop Support

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–07430 Filed 3–31–16; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, April 8, 2016.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Natise Allen,

Executive Assistant.

[FR Doc. 2016–07649 Filed 3–30–16; 4:15 pm]

BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps NCCC Project Sponsor Application for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Barbara Lane, at 202–606–6867 or email to *blane@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within May 2, 2016.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) *By email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on December 28, 2015 at Volume 80 FR 80755. This comment period ended February 26, 2016. No public comments were received from this Notice.

Description: The AmeriCorps NCCC Project Sponsor Application is completed by organizations interested in sponsoring an AmeriCorps NCCC team. The NCCC is a full-time, residential, national service program whose mission is to strengthen communities and develop leaders through team-based national and community service. The AmeriCorps NCCC Project Sponsor Application is completed by organizations interested in sponsoring an AmeriCorps NCCC team. The application will be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on March 31, 2016.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps NCCC Project Sponsor Application.

OMB Number: 3045–0010.

Agency Number: None.

Affected Public: Current/prospective AmeriCorps NCCC Project Sponsors.

Total Respondents: 1,800 annually.

Frequency: Rolling application process.

Average Time per Response: Averages 9.5 hours.

Estimated Total Burden Hours: 17,100 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: March 29, 2016.

Jacob Sgambati,

NCCC Director of Operations.

[FR Doc. 2016–07442 Filed 3–31–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–HA–0004]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by May 2, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Application for TRICARE-Provider Status: Corporate Services Provider; DD Form X644; OMB Control Number 0720–0020.

Type of Request: Reinstatement, with change.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 100.

Needs and Uses: The information collection requirement is necessary to allow eligible providers to apply for Corporate Services Provider status under the TRICARE program.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Stephanie Tatham.

Comments and recommendations on the proposed information collection should be emailed to Ms. Stephanie Tatham, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: March 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–07410 Filed 3–31–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Establishment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Establishment of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is establishing the charter for the Defense Innovation Advisory Board ("the Board").

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being established in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The Board's charter and contact information for the Board's Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.* The Board provides the Secretary of Defense advice and recommendations on innovative means to address future challenges in terms of integrated change to organizational structure and process, business and functional concepts, and technology applications. The Board will be composed of no more than 15 members who possess some or all of the following: (a) A proven track record of sound judgment in leading or governing large, complex private sector corporations or organizations; (b) demonstrated performance in identifying and adopting new technology innovations into the operations of large organizations in either the public or private sector; and (c) demonstrated performance in developing new technology concepts. Members who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members. All members are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, members serve without compensation.

The DoD, as necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Board and must report all their recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board/subcommittee meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: March 29, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–07384 Filed 3–31–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors (BOA) to The President of the Naval Postgraduate School (NPS) Subcommittee

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of The Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meeting of the Board of Advisors to the President of the Naval Postgraduate School will be held. This meeting will be open to the public.

DATES: The meeting will be held on Wednesday, April 20, 2016 from 8:00 a.m. to 4:00 p.m. and on Thursday, April 21, 2016 from 8:00 a.m. to 12:00 p.m. Pacific Time Zone.

ADDRESSES: The meeting will be held at the Naval Postgraduate School, Executive Briefing Center, Herrmann Hall, 1 University Circle, Monterey, CA.

FOR FURTHER INFORMATION CONTACT: Ms. Jaye Panza, Designated Federal Official, 1 University Circle, Code 00H, Monterey, CA 93943–5001, telephone number 831–656–2514.

SUPPLEMENTARY INFORMATION: The purpose of the Board is to advise and assist the President, NPS, in educational and support areas, providing independent advice and recommendations on items such as, but not limited to, organizational management, curricula, methods of instruction, facilities, and other matters of interest. The agenda for the meeting will include the following:

- Administrative Matters
- Updates on end-strength issue
- Recap and closing out 2012 IG report
- Routine 2016 IG Visit Recap
- Command climate survey results
- Faculty morale and retention rates
- Discussions with faculty members; faculty leaders; students
- Update on Navy investments in the infrastructure (buildings, classrooms, labs, test equipment)
- Campus tours

Individuals without a DoD Government Common Access Card require an escort at the meeting location. For access, information, or to send written statements for consideration at the committee meeting contact Ms. Jaye Panza, Designated Federal Officer, Naval Postgraduate School, 1 University Circle, Monterey, CA 93943–5001 or by fax 831–656–2789 by March 31, 2016.

Dated: March 28, 2016.

C. Pan,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2016–07422 Filed 3–31–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government, as represented by the Secretary of the Navy and are available for domestic and foreign licensing by the Department of the Navy.

The following patents are available for licensing: Patent No. 8,904,736: VEHICLE AND MAST MOUNTING ASSEMBLY//Patent No. 8,902,801: ARRAY SYSTEM FOR SEGMENTING SIGNALS AND GENERATING A COMPLEX WAVEFORM AT A FOCAL POINT USING RECOMBINATION OF SEGMENTED SIGNALS//Patent No. 9,001,864: USE OF WAVELET TRANSFORMS TO PRODUCE COMPLEX WAVEFORMS FROM A REDUCED NUMBER OF DISCRETE FREQUENCY TRANSMITTERS//Patent No. 9,083,418: VERSATILE ANTENNA RECEIVED SIGNAL STRENGHT MEASUREMENT SYSTEM NOT AFFECTING ANTENNA PATTERN AND RECEIVER PERFORMANCE// Patent No. 8,973, 502: SIMULTANEOUS NONELECTRIC PRIMING ASSEMBLY AND METHOD//Patent No. 8,907,225: STRUCTURES AND METHODS RELATED TO DETECTION, SENSING AND/OR MITIGATING UNDESIREABLE STRUCTURES OR INTRUSION EVENTS ON STRUCTURES//Patent No. 9,080,989 WHISKER MANUFACTURING, DETECTION, RESPONSE, AND COMPOUND MANUFACTURING APPARATUS AND METHOD//Patent No. 9,244,791 FUSION OF MULTIPLE MODALITIES FOR DETERMING A UNIQUE MICROELECTRONIC DEVICE SIGNATURE//Patent No. 9,079,211 INTERGRANULAR CORROSION AND INTERGRANULAR STRESS CORROSION CRACKING RESISTANCE IMPROVEMENT METHOD FOR METALLIC ALLOYS//Patent No. 9,263,139 METHOD AND SYSTEM FOR IMPROVING THE RADIATION TOLERANCE OF FLOATING GATE MEMORIES.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, telephone 812–854–4100.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: March 28, 2016.

C. Pan,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2016–07431 Filed 3–31–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA®) Information To Be Verified for the 2017–2018 Award Year

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

[CFDA Numbers: 84.007, 84.033, 84.038, 84.063, and 84.268.]

SUMMARY: For each award year, the Secretary publishes in the **Federal Register** a notice announcing the FAFSA information that an institution and an applicant may be required to verify, as well as the acceptable documentation for verifying FAFSA information. This is the notice for the 2017–2018 award year.

FOR FURTHER INFORMATION CONTACT: Jacquelyn C. Butler, U.S. Department of Education, 400 Maryland Avenue SW., Room 6W232, Washington, DC 20202. Telephone: (202) 453–6088.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The Secretary includes on the applicant's Institutional Student Information Record (ISIR) flags that indicate (1) that the applicant has been selected by the Secretary for verification and (2) the

Verification Tracking Group in which the applicant has been placed. This, in turn, indicates which FAFSA information needs to be verified for that applicant and, if appropriate, for the applicant's parent(s) or spouse. The Student Aid Report (SAR) provided to the applicant will indicate that the applicant's FAFSA information has been selected for verification and direct the applicant to contact the institution for further instructions for completing the verification process.

The following chart lists, for the 2017–2018 award year, the FAFSA information that an institution and an applicant and, if appropriate, the applicant's parent(s) or spouse, may be required to verify under 34 CFR 668.56. The chart also lists the acceptable documentation that must, under § 668.57, be provided to an institution for that information to be verified.

FAFSA Information	Acceptable documentation
Income information for tax filers: a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions d. Untaxed Portions of Pensions e. IRA Deductions and Payments f. Tax Exempt Interest Income g. Education Credits	For income information listed under items a through g for tax filers— (1) 2015 tax account information of the tax filer that the Secretary has identified as having been obtained from the Internal Revenue Service (IRS) through the IRS Data Retrieval Tool[1] and that has not been changed after the information was obtained from the IRS; (2) A transcript[1] obtained from the IRS that lists 2015 tax account information of the tax filer; or (3) A transcript[1] that was obtained at no cost from the relevant taxing authority of a U.S. territory (Guam, American Samoa, the U.S. Virgin Islands) or commonwealth (Puerto Rico and the Northern Mariana Islands), or a foreign central government that lists 2015 tax account information of the tax filer.
Income information for tax filers with special circumstances: a. Adjusted Gross Income (AGI) b. U.S. Income Tax Paid c. Untaxed Portions of IRA Distributions d. Untaxed Portions of Pensions e. IRA Deductions and Payments f. Tax Exempt Interest Income g. Education Credits	(1) For a student or the parent(s) of a dependent student who filed a 2015 joint income tax return and whose income is used in the calculation of the applicant's expected family contribution and who at the time the FAFSA was completed was separated, divorced, widowed, or married to someone other than the individual included on the 2015 joint income tax return— (a) A transcript[1] obtained from the IRS or other relevant taxing authority that lists 2015 tax account information of the tax filer(s); and (b) A copy of IRS Form W–2[2] for each source of 2015 employment income received or an equivalent document.[2] (2) For an individual who is required to file a 2015 IRS income tax return and has been granted a filing extension by the IRS— (a) A copy of IRS Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," that the individual filed with the IRS for tax year 2015; (b) If applicable, a copy of the IRS's approval of an extension beyond the automatic six-month extension if the individual requested an additional extension of the filing time for tax year 2015; (c) Confirmation of non-filing from the IRS or other relevant taxing authority dated on or after October 1, 2016; (d) A copy of IRS Form W–2[2] for each source of 2015 employment income received or an equivalent document;[2] and (e) If self-employed, a signed statement certifying the amount of AGI and U.S. income tax paid for tax year 2015. **Note:** An institution may require that, after the income tax return is filed, an individual granted a filing extension submit tax information using the IRS Data Retrieval Tool[1] or by obtaining a transcript[1] from the IRS that lists 2015 tax account information. When an institution receives such information, it must be used to reverify the FAFSA information included on the transcript.[1] (3) For an individual who was the victim of IRS tax-related identity theft— (a) A Tax Return DataBase View (TRDBV) transcript obtained from the IRS; and (b) A statement signed and dated by the tax filer indicating that he or she was a victim of IRS tax-related identity theft and that the IRS has been made aware of the tax-related identity theft. **Note:** Tax filers may inform the IRS of the tax-related identity theft and obtain a TRDBV transcript by calling the IRS's Identity Protection Specialized Unit (IPSU) at 1–800–908–4490. Tax filers who cannot obtain a TRDBV transcript may instead submit another official IRS transcript or equivalent document provided by the IRS if it includes all of the income and tax information required to be verified. Unless the institution has reason to suspect the authenticity of the TRDBV transcript or an equivalent document provided by the IRS, a signature or stamp or any other validation from the IRS is not needed. (4) For an individual who filed an amended tax return with the IRS— (a) A transcript obtained from the IRS that lists 2015 tax account information of the tax filer(s); and (b) A signed copy of the IRS Form 1040X that was filed with the IRS.
Income information for nontax filers: a. Income earned from work	For an individual who has not filed and, under IRS or other relevant taxing authority rules (*e.g.*, the Republic of the Marshall Islands, the Republic of Palau, the Federated States of Micronesia, a U.S. territory or commonwealth or a foreign central government), is not required to file a 2015 income tax return— (1) A signed statement certifying— (a) That the individual has not filed and is not required to file a 2015 income tax return; and (b) The sources of 2015 income earned from work and the amount of income from each source;

FAFSA Information	Acceptable documentation
	(2) A copy of IRS Form W–2 [2] for each source of 2015 employment income received or an equivalent document;[2] and (3) Confirmation of non-filing from the IRS or other relevant taxing authority dated on or after October 1, 2016.
Number of Household Members	A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents that lists the name and age of each household member for the 2017–2018 award year and the relationship of that household member to the applicant. **Note:** Verification of number of household members is not required if— • For a dependent student, the household size indicated on the ISIR is two and the parent is single, separated, divorced, or widowed, or the household size indicated on the ISIR is three if the parents are married or unmarried and living together; or • For an independent student, the household size indicated on the ISIR is one and the applicant is single, separated, divorced, or widowed, or the household size indicated on the ISIR is two if the applicant is married.
Number in College	(1) A statement signed by the applicant and, if the applicant is a dependent student, by one of the applicant's parents listing the name and age of each household member who is or will be attending an eligible postsecondary educational institution as at least a half-time student in the 2017–2018 award year in a program that leads to a degree or certificate and the name of that educational institution. (2) If an institution has reason to believe that the signed statement provided by the applicant regarding the number of household members enrolled in eligible postsecondary institutions is inaccurate, the institution must obtain documentation from each institution named by the applicant that the household member in question is, or will be, attending on at least a half-time basis unless— (a) The applicant's institution determines that such documentation is not available because the household member in question has not yet registered at the institution the household member plans to attend; or (b) The institution has documentation indicating that the household member in question will be attending the same institution as the applicant. **Note:** Verification of the number of household members in college is not required if the number in college indicated on the ISIR is "1."
High School Completion Status	The applicant's high school completion status when the applicant attends the institution in 2017–2018. (1) *High School Diploma* (a) A copy of the applicant's high school diploma; (b) A copy of the applicant's final official high school transcript that shows the date when the diploma was awarded; or (c) A copy of the "secondary school leaving certificate" (or other similar document) for students who completed secondary education in a foreign country and are unable to obtain a copy of their high school diploma or transcript. **Note:** Institutions that have the expertise may evaluate foreign secondary school credentials to determine their equivalence to U.S. high school diplomas. Institutions may also use a foreign diploma evaluation service for this purpose. (2) *Recognized Equivalent of a High School Diploma* (a) General Educational Development (GED) Certificate or GED transcript; (b) A State certificate or transcript received by a student after the student has passed a State-authorized examination (HiSET, TASC, or other State-authorized examination) that the State recognizes as the equivalent of a high school diploma; (c) An academic transcript that indicates the student successfully completed at least a two-year program that is acceptable for full credit toward a bachelor's degree at any participating institution; or (d) For a person who is seeking enrollment in an educational program that leads to at least an associate degree or its equivalent and who excelled academically in high school but did not finish, documentation from the high school that the student excelled academically and documentation from the postsecondary institution that the student has met its written policies for admitting such students.

FAFSA Information	Acceptable documentation
	(3) *Homeschool* (a) If the State where the student was homeschooled requires by law that such students obtain a secondary school completion credential for homeschool (other than a high school diploma or its recognized equivalent), a copy of that credential; or (b) If State law does not require the credential noted in 3a), a transcript or the equivalent signed by the student's parent or guardian that lists the secondary school courses the student completed and documents the successful completion of a secondary school education in a homeschool setting. **Note:** In cases where documentation of an applicant's completion of a secondary school education is unavailable, *e.g.,* the secondary school is closed and information is not available from another source, such as the local school district or a State Department of Education, or in the case of homeschooling, the parent(s)/guardian(s) who provided the homeschooling is deceased, an institution may accept alternative documentation to verify the applicant's high school completion status (*e.g.,* DD Form 214 Certificate of Release or Discharge From Active Duty that indicates the individual is a high school graduate or equivalent. When documenting an applicant's high school completion status, an institution may rely on documentation it has already collected for purposes other than the Title IV verification requirements if the documentation meets the criteria outlined above (*e.g.,* high school transcripts maintained in the admissions office). Verification of high school completion status is not required if the institution successfully verified and documented the applicant's high school completion status for a prior award year.
Identity/Statement of Educational Purpose	(1) An applicant must appear in person and present the following documentation to an institutionally authorized individual to verify the applicant's identity— (a) An unexpired valid government-issued photo identification such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or passport. The institution must maintain an annotated copy of the unexpired valid government-issued photo identification that includes— i. The date the identification was presented; and ii. The name of the institutionally authorized individual who reviewed the identification; and (b) A signed statement using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I ________________ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending ________________ for 2017–2018. (Name of Postsecondary Educational Institution) ________________________ ____________ (Student's Signature) (Date) ________________________ (Student's ID Number) (2) If an institution determines that an applicant is unable to appear in person to present an unexpired valid photo identification and execute the Statement of Educational Purpose, the applicant must provide the institution with— (a) A copy of an unexpired valid government-issued photo identification such as, but not limited to, a driver's license, non-driver's identification card, other State-issued identification, or passport that is acknowledged in a notary statement or that is presented to a notary; and (b) An original notarized statement signed by the applicant using the exact language as follows, except that the student's identification number is optional if collected elsewhere on the same page as the statement: **Statement of Educational Purpose** I certify that I ________________ am (Print Student's Name) the individual signing this Statement of Educational Purpose and that the Federal student financial assistance I may receive will only be used for educational purposes and to pay the cost of attending ________________ for 2017–2018. (Name of Postsecondary Educational Institution) ________________________ ____________ (Student's Signature) (Date) ________________________ (Student's ID Number)

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[1] An institution may accept a copy of the original 2015 income tax return for tax filers who are—

(a) Consistent with guidance that the Secretary may provide following the period after the IRS processes 2015 income tax returns, unable to use the IRS Data Retrieval Tool or obtain a transcript from the IRS;

(b) Unable to obtain a transcript at no cost from the taxing authority of a U.S. territory (Guam, American Samoa, the U.S. Virgin Islands) or commonwealth (Puerto Rico and the Northern Mariana Islands), or a foreign central government that lists 2015 tax account information of the tax filer;

The copy of the 2015 income tax return must include the signature of the tax filer or one of the filers of a joint income tax return or the signed, stamped, typed, or printed name and address of the preparer of the income tax return and the preparer's Social Security Number, Employer Identification Number, or Preparer Tax Identification Number.

For a tax filer who filed an income tax return other than an IRS form, such as a foreign or Puerto Rican tax form, the institution must use the income information (converted to U.S. dollars) from the lines of that form that correspond most closely to the income information reported on a U.S. income tax return.

An individual who did not retain a copy of his or her 2015 tax account information and that information cannot be located by the IRS or other relevant taxing authority, must submit to the institution—

(a) Copies of all IRS Form W–2s or equivalent documents;
(b) Documentation from the IRS or other relevant taxing authority that indicates the individual's 2015 tax account information cannot be located; and
(c) A signed statement that indicates that the individual did not retain a copy of his or her 2015 tax account information.

[2] An individual who is required to submit an IRS Form W–2 or an equivalent document but did not maintain his or her copy should request a duplicate from the employer who issued the original or from the government agency that issued the equivalent document. If the individual is unable to obtain a duplicate W–2 or an equivalent document in a timely manner, the institution may permit that individual to provide a signed statement, in accordance with 34 CFR 668.57(a)(6), that includes—

(a) The amount of income earned from work;
(b) The source of that income; and
(c) The reason why the IRS Form W–2 or an equivalent document is not available in a timely manner.

Other Sources for Detailed Information

We provide a more detailed discussion on the verification process in the following resources:

- *2017–2018 Application and Verification Guide.*
- *2017–2018 ISIR Guide.*
- *2017–2018 SAR Comment Codes and Text.*
- *2017–2018 COD Technical Reference.*
- Program Integrity Information—Questions and Answers on Verification at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2009/verification.html.*

These publications are on the Information for Financial Aid Professionals Web site at *www.ifap.ed.gov.* *Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1070g, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: March 29, 2016.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning, and Innovation, Delegated the duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2016–07411 Filed 3–31–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0038]

Agency Information Collection Activities; Comment Request; William D. Ford Federal Direct Loan Program (DL) Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 31, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0038. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: William D. Ford Federal Direct Loan Program (DL) Regulations

OMB Control Number: 1845–0021

Type of Review: A revision of an existing information collection

Respondents/Affected Public: State, Local, and Tribal Governments;

Individuals or Households; Private Sector

Total Estimated Number of Annual Responses: 8,698,789

Total Estimated Number of Annual Burden Hours: 709,521

Abstract: The William D. Ford Direct Loan Program regulations cover areas of program administration. These regulations are in place to minimize administrative burden for program participants, to determine eligibility for and provide program benefits to borrower, and to prevent fraud and abuse of program funds to protect the taxpayers' interests. This request is for a revision of the current OMB approval of reporting and record-keeping related to the administrative requirements of the Direct Loan program.

Dated: March 28, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–07326 Filed 3–31–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–742–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 03/24/16 Negotiated Rates—Cargill Incorporated (RTS) 3085–26 to be effective 4/1/2016.

Filed Date: 3/24/16.

Accession Number: 20160324–5068.

Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: RP16–743–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: § 4(d) Rate Filing: 03/24/16 Negotiated Rates—Cargill Incorporated (RTS) 3085–27 to be effective 4/1/2016.

Filed Date: 3/24/16.

Accession Number: 20160324–5070.

Comments Due: 5 p.m. ET 4/5/16.

Docket Numbers: RP16–744–000.

Applicants: Chesapeake Energy Marketing, L.L.C., FourPoint Energy, LLC.

Description: Joint Petition of Chesapeake Energy Marketing, L.L.C. and FourPoint Energy, LLC For Limited Waiver And Request For Expediated Action under RP16–744.

Filed Date: 3/24/16.

Accession Number: 20160324–5224.

Comments Due: 5 p.m. ET 4/4/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP11–2107–001.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Compliance filing Petition to Amend Docket No. RP11–2107 Stipulation and Agreement.

Filed Date: 3/24/16.

Accession Number: 20160324–5140.

Comments Due: 5 p.m. ET 4/5/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07374 Filed 3–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC16–61–000]

Dominion Cove Point LNG, LP.; Notice of Filing

Take notice that on March 16, 2016, Dominion Cove Point LNG, L.P. (DCP) submitted a request proposing that DCP be granted a waiver of the requirements of Order No. 561 and 18 CFR part 201, specifically Gas Plant Instruction No. 3(17) in calculating Allowance for Funds Used During Construction (AFUDC) rate. Specifically, DCP proposes to utilize the capital structure of its ultimate parent, Dominion Resources, Inc. (DRI), DRI's actual cost of debt, and the imputed return on equity from DCP's rate settlement, in calculating the AFUDC rate.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 18, 2016

Dated: March 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07342 Filed 3–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1940–010.

Applicants: Ohio Valley Electric Corporation.

Description: Compliance filing: Compliance Filing for M–2 to be effective 1/1/2015.

Filed Date: 3/28/16.

Accession Number: 20160328–5168.

Comments Due: 5 p.m. ET 4/18/16.

Docket Numbers: ER14–67–001.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: 1148R16 American Electric Power NITSA and NOAs to be effective 10/1/2013.

Filed Date: 3/28/16.

Accession Number: 20160328–5165.

Comments Due: 5 p.m. ET 4/18/16.

Docket Numbers: ER16–1276–000.

Applicants: Florida Power & Light Company.

Description: Section 205(d) Rate Filing: FPL Revisions to LCEC Rate Schedule No. 317 to be effective 1/1/2013.

Filed Date: 3/25/16.

Accession Number: 20160325–5199.

Comments Due: 5 p.m. ET 4/15/16.

Docket Numbers: ER16–1277–000.

Applicants: White Pine Solar, LLC.

Description: Baseline eTariff Filing: White Pine Solar, LLC Market-Based Rate Application to be effective 5/24/2016.

Filed Date: 3/28/16.

Accession Number: 20160328–5000.

Comments Due: 5 p.m. ET 4/18/16.

Docket Numbers: ER16–1278–000.

Applicants: Public Service Company of Colorado.

Description: Application of Public Service Company of Colorado for 2015 Production Formula Rate Charges and Transmission Formula Rate Charges for Post-Retirement Benefits Other than Pensions.

Filed Date: 3/25/16.

Accession Number: 20160325–5209.

Comments Due: 5 p.m. ET 4/15/16.

Docket Numbers: ER16–1279–000.

Applicants: Florida Power & Light Company.

Description: Section 205(d) Rate Filing: FPL Revisions to FKEC Rate Schedule No. 322 to be effective 1/1/2013.

Filed Date: 3/28/16.

Accession Number: 20160328–5073.

Comments Due: 5 p.m. ET 4/18/16.

Docket Numbers: ER16–1281–000.

Applicants: PacifiCorp.

Description: Section 205(d) Rate Filing: BPA NITSAs ? SE Idaho Area & Idaho Falls Power to be effective 7/1/2016.

Filed Date: 3/28/16.

Accession Number: 20160328–5132.

Comments Due: 5 p.m. ET 4/18/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07343 Filed 3–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC16–57–000]

Dominion Carolina Gas Transmission, LLC; Notice of Filing

Take notice that on March 8, 2016, Dominion Carolina Gas Transmission, LLC (DCG) submitted a request that DCG be granted any waivers of the requirements of Order No. 561 and 18 CFR part 201, specifically Gas Plant Instruction No. 3(17) in calculating Allowance for Funds Used During Construction (AFUDC) rate deemed necessary to allow its proposed method of AFUDC. Specifically, DCG proposes to use a hypothetical capital structure of 50 percent debt and 50 percent equity, the rate of return on equity from the settlement of DCG's last rate case proceeding, and the actual cost of long-term debt of Dominion Midstream Partners, LP, when calculating AFUDC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 18, 2016.

Dated: March 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07341 Filed 3–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–154]

Duke Energy Carolinas, LLC; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Keowee-Toxaway Hydroelectric Project, located on the Toxaway, Keowee, and Little Rivers in Oconee County and Pickens County, South Carolina and Transylvania County, North Carolina, and has prepared a final Environmental Assessment (EA) for the project. The project does not occupy federal land.

The final EA contains staff's analysis of the potential environmental impacts of the project and concludes that relicensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is on file with the Commission and is available for public inspection. The final EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Rachel McNamara at (202) 502–8340 or *rachel.mcnamara@ferc.gov.*

Dated: March 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07344 Filed 3–31–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10504–001]

Town of Cedaredge, Colorado; Notice of Application Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 10504–001.

c. *Date Filed:* July 2, 2013.

d. *Applicant:* Town of Cedaredge, Colorado.

e. *Name of Project:* Cedaredge Project.

f. *Location:* On the Cedaredge Municipal Water System of the town of Cedaredge, in Delta County, Colorado.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Kathleen Ann Sickles, Town Administrator, P.O. Box 398, Cedaredge, CO 81413, (970) 856–3123.

i. *FERC Contact:* Mr. Henry Woo, (202) 502–8872, *henry.woo@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice by the Commission. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–10504–001) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant proposes to surrender the exemption for the Cedaredge Project No. P–10504. The applicant states that the exemption is being surrendered because the project is no longer economically feasible.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the exemption surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: March 28, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–07340 Filed 3–31–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0527; FRL–9944–13–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Paints and Allied Products Manufacturing Area Source Category (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Paints and Allied Products Manufacturing Area Source Category (40 CFR part 63, subpart CCCCCCC) (Renewal)", (EPA ICR No. 2348.04, OMB Control No. 2060–0633) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through March 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 2, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0527, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions are specified at 40 CFR part 63, subpart CCCCCCC. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are also required annually.

Form Numbers: None.

Respondents/Affected Entities: Paints and allied products manufacturing facilities.

Respondent's Obligation to Respond: Mandatory (40 CFR part 63, subpart CCCCCCC).

Estimated Number of Respondents: 2,190 (total).

Frequency of Response: Initially, occasionally and annually.

Total Estimated Burden: 5,040 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total Estimated Cost: $1,240,000 (per year). There are no annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a small adjustment increase in the estimated respondent labor hours in this ICR from the most recently-approved ICR. This is due to a change in our estimation assumption, and not associated with any program changes. In this ICR, we assume existing sources will have to re-familiarize themselves with the regulatory requirements each year, which results in an increase in burden.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–07327 Filed 3–31–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA EPA–HQ–OECA–2012–0496; FRL–9944–29–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (40 CFR part 63, subpart AAAAAAA) (Renewal) (EPA ICR No. 2352.04, OMB Control No. 2060–0634), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through March 31, 2016. Public comments were previously requested via the **Federal Register** (80 FR 32116) on June 5, 2015 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 2, 2016.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA EPA–HQ–OECA–2012–0496, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of affected facilities are required to comply with reporting and record keeping requirements for the general provisions of 40 CFR part 63, subpart A, as well as the specific requirements at 40 CFR part 63, subpart AAAAAAA. This includes submitting initial notification reports, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with the standards.

Form Numbers: None.

Respondents/Affected Entities: Area source facilities that process asphalt or manufacture asphalt roofing products.

Respondent's Obligation to Respond: Mandatory (40 CFR part 63, subpart AAAAAAA).

Estimated Number of Respondents: 75 (total).

Frequency of Response: Initially and semiannually.

Total Estimated Burden: 3,020 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total Estimated Cost: $305,000 (per year), which includes $1,130 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a small adjustment increase in the respondent labor hours and the total O&M costs as currently identified in the OMB Inventory of Approved Burdens. The increase in labor hours is due to a change in assumption. In this ICR, we assume all existing sources will take some time each year to re-familiarize themselves with the regulatory requirements. The increase of five dollars in total O&M cost is due to rounding of all calculated values to three significant figures.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2016–07328 Filed 3–31–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9026–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www2.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 03/21/2016 Through 03/25/2016

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160066, Final, BOP, KY, U.S. Penitentiary and Federal Prison Camp Letcher County, Review Period Ends: 05/02/2016, Contact: Issac Gaston 202–514–6470.

EIS No. 20160067, Final, USACE, NGA, MO, Next NGA West Campus in the Greater St. Louis Metropolitan Area, Review Period Ends: 05/02/2016, Contact: David Berczek 314–676–1123.

EIS No. 20160068, Final, USFS, ID, Becker Integrated Resource Project (Formerly the Becker Vegetation Management Project), Review Period Ends: 05/16/2016, Contact: Michael Feiger 208–392–6681.

EIS No. 20160069, Draft, FERC, TX, Golden Pass LNG Export Project, Comment Period Ends: 05/16/2016, Contact: Eric Howard 202–502–6263.

Amended Notices

EIS No. 20160034, Second Draft Supplemental, USFS, MT, Rock Creek Mine Project, Comment Period Ends: 04/19/2016, Contact: Michael Huffine 406–293–6211, Revision to FR Notice published 02/19/2016; Extending Comment Period from 04/04/2016 to 04/19/2016.

Dated: March 29, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–07417 Filed 3–31–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0114)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995. On January 5, 2016, (81 FR 239), the FDIC requested comment for 60 days on a proposal to renew the information collections described below. No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before May 2, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room MB–3016, or Manuel E. Cabeza, (202.898.3767), Counsel, Room MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper or Manuel E. Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collections of information:

1. *Title:* Foreign Banks.

OMB Number: 3064–0114.

Affected Public: Insured branches of foreign banks.

Estimated Burden:

	Number of respondents	Responses per year	Hours per response	Burden hours
Reporting Burden				
Moving a Branch	1	1	8	8
Consent to Operate	1	1	8	8
Conduct Activities	1	1	8	8
Pledge of Assets Documents	10	4	.25	10
Reports	10	4	2	80
Recordkeeping Burden	10	1	120	1,200

Estimated Total Annual Burden: 1,314 hours.

General Description: The Foreign Banks information collection, 3064–0114, consist of: Applications to move an insured state-licensed branch of a foreign bank; applications to operate as such noninsured state-licensed branch of a foreign bank; applications from an insured state-licensed branch of a foreign bank to conduct activities that are not permissible for a federally-licensed branch; internal recordkeeping by such branches; and reporting and recordkeeping requirements relating to such a branch's pledge of assets to the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 29th day of March, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–07403 Filed 3–31–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10447, the Farmers Bank of Lynchburg; Lynchburg, Tennessee

NOTICE IS HEREBY GIVEN that the Federal Deposit Insurance Corporation ("FDIC") as Receiver for The Farmers Bank of Lynchburg, Lynchburg, Tennessee ("the Receiver") intends to terminate its receivership for said institution. The FDIC was appointed receiver of The Farmers Bank of Lynchburg on June 15, 2012. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: March 29, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–07402 Filed 3–31–16; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–15–15BFV]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

A Study of Viral Persistence in Ebola Virus Disease (EVD) Survivors—Existing Information Collection Without an OMB Control Number—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Much progress has been made in the year since the CDC first responded to the Ebola outbreak in West Africa, but the agency's efforts must continue until there are zero new cases of Ebola virus disease (EVD). As the CDC's 2014 Ebola virus response maintains the international goal of zero new EVD cases in 2015, the agency must intensify its efforts to identify and prevent every potential route of human disease transmission and to understand the most current community barriers to reaching that final goal.

Persistence of Ebola Virus (EBOV) in Body Fluids of EVD Survivors in Sierra Leone is the first systematic examination of the post-recovery persistence of EBOV and the risks of transmission from a cohort of convalescent Ebola survivors during close or intimate contact. It is important to fully understand how long the virus stays active in body fluids other than blood in order to target and refine public health interventions to arrest the ongoing spread of disease.

The research study is comprised of three modules based on the body fluids to be studied: A pilot module of adult males (semen) and two full modules: Module A of adult men and women repeating collections and questionnaires every two weeks (semen, vaginal secretions, and saliva, tears, sweat, urine, rectal swab), and Module B of lactating adult women repeating collections and questionnaires every three days (sweat and breast milk).

Participants for each module will be recruited by trained study staff from Ebola treatment units (ETUs) and survivor registries. Participants will be followed up at study sites in government hospitals.

Specimens will be tested for EBOV ribonucleic acid (RNA) by reverse transcription polymerase chain reaction test (RT–PCR) in Sierra Leone at the CDC laboratory facility in Bo. All positive RT–PCR samples will be sent to CDC Atlanta for virus isolation. Each body fluid will be collected until two negative RT–PCR results are obtained. Participants will be followed until all their studied body fluids are negative. They will receive tokens of appreciation for their participation at the initial visit and again at every subsequent follow-up visit [*e.g.,* 120,000 Leones (approximately $28 US dollars) and a supply of condoms]. For Module A, men and women will be recruited in equal numbers for this study until more information on gender effects of viral persistence is available. A trained study data manager will collect test results for all participants in a laboratory results form.

Results and analyses are needed to update relevant counseling messages and recommendations from the Sierra Leone Ministry of Health, World Health Organization, and CDC. The study will provide the most current information that is critical to the development of public health measures, such as recommendations about sexual activity, breastfeeding, and other routine activities and approaches to evaluation of survivors to determine whether they can safely resume sexual activity. These approaches in turn are expected to reduce the risk of Ebola resurgence and mitigate stigma for thousands of survivors. The information is likewise critical to reducing the risk that Ebola would be introduced in a location that has not previously been affected.

The total burden hours requested for the research study in Sierra Leone is 2,474 hours incurred by 530 participants. There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Data Manager	Intake Form	1	550	20/60
Pilot participants	Survivor Questionnaire	100	1	30/60
Pilot participants	Survivor Follow-up Questionnaire	100	5	15/60
Pilot participants	3 & 6 Month Follow up Questionnaire	100	2	15/60
Main study male participants	Survivor Questionnaire	120	1	30/60
Main study male participants	Survivor Follow-up Questionnaire	120	12	15/60
Main study male participants	3 & 6 Month Follow up Questionnaire	120	2	15/60
Main study female participants	Survivor Questionnaire	120	1	30/60
Main study female participants	Survivor Follow-up Questionnaire	120	4	15/60
Main study female participants	3 & 6 Month Follow up Questionnaire	120	2	15/60
Data Manager	Laboratory Results Form	1	4,250	10/60

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–07424 Filed 3–31–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Availability of the Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI) for HHS/CDC Fort Collins Campus Proposed Improvements

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice of Availability of Final Environmental Assessment and a Finding of No Significant Impact (FONSI) for HHS/CDC Fort Collins Campus Proposed Improvements.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is issuing this notice to advise the public that HHS/CDC has prepared and approved on March 22, 2016, a Finding of No Significant Impact (FONSI) based on the Final Environmental Assessment for proposed improvements on the HHS/CDC Fort Collins Campus. HHS/CDC prepared the Final EA in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) implementing regulations (40 CFR parts 1500–1508) and the HHS General Administration Manual (GAM) Part 30 Environmental Procedures, dated February 25, 2000. HHS/CDC has determined that the proposed action would not have a significant impact on the human or natural environment and therefore, the preparation of an Environmental Impact Statement is not required.

DATES: The FONSI and Final EA are available as of the publication date of this notice.

ADDRESSES: Copies of the FONSI and Final EA are available at the following locations:

- Old Town Library, 201 Peterson Street, Fort Collins, Colorado 80524.
- Harmony Library, 4616 South Shields, Fort Collins, Colorado 80526.

Copies of the FONSI and/or Final EA can also be requested from: Robert Lawson, Centers for Disease Control and Prevention, Asset Management Services Office, MS K80, 1600 Clifton Road, Atlanta, GA 30329, 770–488–2447.

SUPPLEMENTARY INFORMATION: The Centers for Disease Control and Prevention (CDC), an Operating Division (OPDIV) of the Department of Health and Human Services (HHS) has prepared a Final EA to assess the potential impacts associated with the undertaking of proposed improvements on the HHS/CDC Fort Collins Campus (CDC Fort Collins Campus) located on the Colorado State University (CSU) Foothills Campus in Fort Collins, Colorado. The Final EA analyzed the effects of the Build Alternative (Proposed Action) and the No Build Alternative. The Build Alternative consists of improvements to the CDC Fort Collins Campus which entails the construction of a new approximately 5,600 gsf building which will house laboratory support freezer space and communal space, upgrades to existing parking areas and additional infrastructure improvements. The No Build Alternative represents the continued operation of the existing facilities at the CDC Fort Collins Campus without any new construction or infrastructure upgrades.

The Final EA evaluated the potential impacts to socioeconomics and environmental justice, land use, zoning, public policy, community facilities and services, transportation, air quality, noise, cultural resources, urban design and visual resources, natural resources, utility service, hazardous materials, greenhouse gases and sustainability, and construction. HHS/CDC assessed the potential impacts of the Build Alternative in the Final EA and as a result issued a FONSI indicating that the proposed action will not have a significant impact on the environment.

Dated: March 28, 2016.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–07368 Filed 3–31–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10545, CMS–10309, CMS–855(A, B, I) and CMS–10468]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are require; to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 31, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By Regular Mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number __, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10545—Outcome and Assessment Information Set (OASIS) OASIS–C2/ICD–10
CMS–10309—Grandfathering Provisions of the Medicare DMEPOS Competitive Bidding Program
CMS–855(A, B, I)—Medicare Enrollment Application
CMS–10468—Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Outcome and Assessment Information Set (OASIS) OASIS–C2/ICD–10; *Use:* Home health agencies (HHAs) are required to collect the outcome and assessment information data set (OASIS) to participate in the Medicare program. The OASIS item set has been revised and is now referred to as OASIS–C2. It is scheduled for implementation on January 1, 2017. The OASIS C2 is being modified to include changes pursuant to the Improving Medicare Post-Acute Care Transformation Act of 2014 (the IMPACT Act), and formatting changes throughout the document. *Form Number:* CMS–10545 (OMB control number: 0938–1279); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 12,198; *Total Annual Responses:* 17,900,000; *Total Annual Hours:* 15,812,511. (For policy questions regarding this collection contact Michelle Brazil at 410–786–1648).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title* of Information Collection: Grandfathering Provisions of the Medicare DMEPOS Competitive Bidding Program; *Use:* The grandfathering process was established in the April 10, 2007 final rule for competitive bidding for rented DME and oxygen and oxygen equipment included under the Medicare DMEPOS Competitive Bidding Program. This process only applies to suppliers that rented DME and oxygen and oxygen equipment to beneficiaries who maintain a permanent residence in a CBA before the implementation of the competitive bidding program. The competitive bidding program will require some beneficiaries to change their suppliers. In order to avoid a beneficiary being without medically necessary equipment we felt it necessary to establish this notification process. *Form Number:* CMS–10309 (OMB control number: 0938–1079); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 1,125; *Total Annual Responses:* 39,998; *Total Annual Hours:* 4,535. (For policy questions regarding this collection contact Djanira Rivera at 410–786–8646).

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application; *Use:* The primary function of the CMS–855 Medicare enrollment application is to gather information from a provider or supplier that tells us who it is, whether it meets certain qualifications to be a health care provider or supplier, where it practices or renders its services, the identity of the owners of the enrolling entity, and other information necessary to establish correct claims payments. *Form Number:* CMS–855(A, B, I) (OMB control number: 0938–0685); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 1,735,800; *Total Annual Responses:* 86,480; *Total Annual Hours:* 290,193. (For policy questions regarding this collection contact Kimberly McPhillips at 410–786–5374.)

4. *Type of Information Collection Request:* Extension of a previously approved collection; *Title of Information Collection:* Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment; *Use:* The Patient Protection and Affordable Care Act, Public Law 111–148, enacted on March 23, 2010, and the Health Care and Education Reconciliation Act, Public Law 111–152, expands access to health insurance for individuals and employees of small businesses through the establishment of new Affordable Insurance Exchanges (Exchanges), including the Small Business Health Options Program (SHOP). The Exchanges, which became operational on January 1, 2014, enhanced competition in the health insurance market, expanded access to affordable health insurance for millions of Americans, and provided consumers with a place to easily compare and shop for health insurance coverage. The reporting requirements and data collection in Medicaid, Children's Health Insurance Programs, and Exchanges: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment (CMS–2334–F) address: (1) Standards related to notices, (2) procedures for the verification of enrollment in an eligible employer-sponsored plan and eligibility for qualifying coverage in an eligible employer-sponsored plan; and (3) other eligibility and enrollment provisions to provide detail necessary for state implementation. *Form Number:* CMS–10468 (OMB control number: 0938–1207); *Frequency:* Annually; *Affected Public:* Individuals, Households and Private Sector; *Number of Respondents:* 13,200; *Total Annual Responses:* 13,200; *Total Annual Hours:* 8,899. (For

policy questions regarding this collection contact Sarah Boehm at 301–492–4429.)

Dated: March 29, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–07423 Filed 3–31–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ORR–3 Placement Report and ORR–4 Progress Report for Unaccompanied Refugee Minors (URM) Program.

OMB No.: 0970–0034.

Description: As required by section 412(d) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from report Form ORR–3 and ORR–4 to administer the Unaccompanied Refugee Minors (URM) program. The ORR–3 (Placement Report) is submitted to ORR by the State agency at the minor's initial placement in the resettlement State within 30 days of the placement, and whenever there is a change in the minor's status, including termination from the program, within 60 days of the change or closure of the case. The ORR–4 (Progress Report) is submitted every 12 months beginning with 12 months from the date of the initial placement to record outcomes of the child's progress toward the goals listed in the child's case plan. ORR–4 is also submitted along with the initial ORR–3 report for 17 years old or above youth related to independent living and/or educational plans. The ORR regulations per 45 CFR 400.120 describe specific URM program reporting requirements.

Respondents: State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–3	15	Estimated responses 178	0.25 (15 min)	Estimated 667.5.
ORR–4	15	Estimated responses 127	1.25 (1 hour and 15 min)	Estimated 2,381.25.

Estimated Total Annual Burden Hours: 3,048.75.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–07361 Filed 3–31–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

OMB No.: 0970–0121.

Description: The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged non-federal home energy resources for low-income households. The LIHEAP leveraging report is the application for leveraging incentive funds that the LIHEAP grantees submit to the U.S. Department of Health and Human Services (HHS) for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary and is described at 45 CFR 96.87. The LIHEAP leveraging report obtains information on the resources leveraged by LIHEAP grantees each federal fiscal year, *e.g.,* as cash, discounts, waivers, and in-kind; the benefits provided to low-income households by these resources, for example, as fuel and payments for fuel, as home heating and cooling equipment, and as weatherization materials and installation; and the fair market value of these resources/benefits.

HHS needs this information in order to carry out federal statutory requirements for administering the LIHEAP leveraging incentive program, to determine accountability and valuation of grantees' leveraged non-federal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposes to request a three-year clearance by OMB for the LIHEAP leveraging report information collection which has received OMB approval in the past. Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Leveraging Report	70	1	38	2,660

Estimated Total Annual Burden Hours: 2,660.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–07359 Filed 3–31–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2489]

Receipt of Notice That a Patent Infringement Complaint Was Filed Against a Biosimilar Applicant

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice that an applicant for a proposed biosimilar product notified FDA that a patent infringement action was filed in connection with the applicant's biologics license application (BLA). Under the Public Health Service Act (PHS Act), an applicant for a proposed biosimilar product or interchangeable product must notify FDA within 30 days after the applicant was served with a complaint in a patent infringement action described under the PHS Act. FDA is required to publish notice of the complaint in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Daniel Orr, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6208, Silver Spring, MD 20993–0002, 240–402–0979, *daniel.orr@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) was enacted as part of the Patient Protection and Affordable Care Act (Pub. L. 111–148) on March 23, 2010. The BPCI Act amended the PHS Act and created an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed biological reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, describes the requirements for a BLA for a proposed biosimilar product or a proposed interchangeable product (351(k) BLA). Section 351(l) of the PHS Act, also added by the BPCI Act, describes certain procedures for exchanging patent information and resolving patent disputes between a 351(k) BLA applicant and the holder of the BLA reference product. If a 351(k) applicant is served with a complaint for a patent infringement described in section 351(l)(6) of the PHS Act, the applicant is required, under section 351(l)(6)(C) of the PHS Act, to provide the FDA with notice and a copy of the complaint within 30 days of service. FDA is required to publish notice of a complaint received under section 351(l)(6)(C) of the PHS Act in the **Federal Register**.

FDA has received notice of the following complaint under section 351(l)(6)(C) of the PHS Act:

Amgen, Inc., v. *Apotex, Inc.*, 15–cv–61631 (consolidated with 15–cv–62081, S.D. Fla., filed October 2, 2015).

FDA has only a ministerial role in publishing notice of a complaint received under section 351(l)(6)(C) of the PHS Act, and does not perform a substantive review of the complaint.

Dated: March 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07364 Filed 3–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0031]

Agency Information Collection Activities; Proposed Collection; Comment Request; Clinical Laboratory Improvement Amendments Act of 1988 Waiver Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on collections of information associated with Clinical Laboratory Improvement Amendments of 1988 (CLIA) waiver applications.

DATES: Submit either electronic or written comments on the collection of information by May 31, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2008–D–0031 for "Agency Information Collection Activities; Proposed Collection; Comment Request; CLIA Waiver Applications." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

CLIA Waiver Applications—OMB Control Number 0910–0598—Extension

Congress passed the CLIA (Pub. L. 100–578) in 1988 to establish quality standards for all laboratory testing. The purpose was to ensure the accuracy, reliability, and timeliness of patient test results regardless of where the test took place. CLIA requires that clinical laboratories obtain a certificate from the Secretary of Health and Human Services (the Secretary), before accepting materials derived from the human body for laboratory tests (42 U.S.C. 263a(b)). Laboratories that perform only tests that are "simple" and that have an "insignificant risk of an erroneous result" may obtain a certificate of waiver (42 U.S.C. 263a(d)(2)). The Secretary has delegated to FDA the authority to determine whether particular tests (waived tests) are "simple" and have "an insignificant risk of an erroneous result" under CLIA (69 FR 22849, April 27, 2004).

On January 30, 2008, FDA published a guidance document entitled "Guidance for Industry and FDA Staff: Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications for Manufacturers of In Vitro Diagnostic Devices" (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm079632.htm*). This guidance document describes recommendations for device manufacturers submitting to FDA an application for determination that a cleared or approved device meets this CLIA standard (CLIA waiver application). The guidance recommends that CLIA waiver applications include a description of the features of the device that make it "simple"; a report describing a hazard analysis that identifies potential sources of error, including a summary of the design and results of flex studies and conclusions drawn from the flex studies; a description of fail-safe and failure alert mechanisms and a description of the studies validating these mechanisms; a description of clinical tests that demonstrate the accuracy of the test in the hands of intended operators; and statistical analyses of clinical study results.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
CLIA waiver application	40	1	40	1,200	48,000	$350,000

[1] There are no capital costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
CLIA waiver records	40	1	40	2,800	112,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The total number of reporting and recordkeeping hours is 160,000 hours. FDA bases the burden on an Agency analysis of premarket submissions with clinical trials similar to the waived laboratory tests. Based on previous years' experience with CLIA waiver applications, FDA expects 40 manufacturers to submit one CLIA waiver application per year. The time required to prepare and submit a waiver application, including the time needed to assemble supporting data, averages 1,200 hours per waiver application for a total of 48,000 hours for reporting. Based on previous years' experience with CLIA waiver applications, FDA expects that each manufacturer will spend 2,800 hours creating and maintaining the record for a total of 112,000 hours.

The total operating and maintenance cost associated with the waiver application is estimated at $350,000. This cost is largely attributed to clinical study costs incurred, which include site selection and qualification, protocol review, and study execution (initiation, monitoring, closeout, and clinical site/subject compensation—including specimen collection for study as well as shipping and supplies).

Dated: March 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07365 Filed 3–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Advisory Committee; Arthritis Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Arthritis Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Arthritis Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until April 5, 2018.

DATES: Authority for the Arthritis Advisory Committee will expire on April 5, 2018, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Begansky, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *AAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services pursuant to 45 CFR part 11 and by the General Services Administration, FDA is announcing the renewal of the Arthritis Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility. The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases, and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of arthritis, rheumatology, orthopedics, epidemiology or statistics, analgesics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting member who is identified with industry interests.

Further information regarding the most recent charter and other information can be found at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/ArthritisAdvisoryCommittee/ucm094137.htm* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: March 25, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07362 Filed 3–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0823]

Agency Information Collection Activities; Proposed Collection; Comment Request; Format and Content Requirements for Over-the-Counter Drug Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the standardized format and content requirements for the labeling of over-the-counter (OTC) drug products.

DATES: Submit either electronic or written comments on the collection of information by May 31, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0823 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Format and Content Requirements for Over-the-Counter Drug Product Labeling." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Format and Content Requirements for OTC Drug Product Labeling—21 CFR Part 201 (OMB Control Number 0910–0340)—Extension

In the **Federal Register** of March 17, 1999 (64 FR 13254) (the 1999 labeling final rule), we amended our regulations governing requirements for human drug products to establish standardized format and content requirements for the labeling of all marketed OTC drug products in part 201 (21 CFR part 201). The regulations in part 201 require OTC drug product labeling to include uniform headings and subheadings, presented in a standardized order, with minimum standards for type size and other graphical features. Specifically, the 1999 labeling final rule added new § 201.66 to part 201. Section 201.66 sets content and format requirements for the Drug Facts portion of labels on OTC drug products.

On June 20, 2000 (65 FR 38191), we published a **Federal Register** final rule that required all OTC drug products marketed under the OTC monograph system to comply with the labeling requirements in § 201.66 by May 16, 2005, or sooner (65 FR 38191 at 38193). Currently marketed OTC drug products are already required to be in compliance with these labeling requirements, and thus will incur no further burden to comply with Drug Facts labeling requirements in § 201.66. Modifications of labeling already required to be in Drug Facts format are usual and customary as part of routine redesign practice, and thus do not create additional burden within the meaning of the PRA. Therefore, the burden to comply with the labeling requirements in § 201.66 is a one-time burden applicable only to new OTC drug products introduced to the marketplace under new drug applications (NDAs), abbreviated new drug applications (ANDAs), or an OTC drug monograph, except for products in "convenience size" packages.[1] New OTC drug products must comply with the labeling requirements in § 201.66 as they are introduced to the marketplace.

Based on a March 1, 2010, estimate provided by the Consumer Healthcare Products Association (75 FR 49495 at 49496, August 13, 2010), we estimated that approximately 900 new OTC drug product stock-keeping units (SKUs) are introduced to the marketplace each year. We estimated that these SKUs are marketed by 300 manufacturers. We estimated that the preparation of labeling for new OTC drug products would require 12 hours to prepare, complete, and review prior to submitting the new labeling to us. Based on this estimate, the annual reporting burden for this type of labeling is approximately 10,800 hours.

All currently marketed sunscreen products are required to be in compliance with the Drug Facts labeling requirements in § 201.66, and thus will incur no further burden under the information collection provisions in the 1999 labeling final rule. However, a new OTC sunscreen drug product, like any new OTC drug product, will be subject to a one-time burden to comply with Drug Facts labeling requirements in § 201.66. We estimate that 60 new SKUs of OTC sunscreen drug products would be marketed each year (77 FR 27234). We estimate that these 60 SKUs would be marketed by 20 manufacturers. We estimate that approximately 12 hours would be spent on each label, based on the most recent estimate used for other OTC drug products to comply with the 1999 Drug Facts labeling final rule, including public comments received on this estimate in 2010 that addressed sunscreens.

In determining the burden for § 201.66, it is also important to consider exemptions or deferrals of the regulation allowed products under § 201.66(e). Since publication of the 1999 labeling final rule, we have received only one request for exemption or deferral. One response over a 10-year period equates to an annual frequency of response equal to 0.1. In the 1999 labeling final rule, we estimated that a request for deferral or exemption would require 24 hours to complete (64 FR 13254 at 13276, March 17, 1999). We continue to estimate that this type of response will require approximately 24 hours. Multiplying the annual frequency of response (0.1) by the number of hour per response (24) gives a total response time for requesting exemption of deferral equal to 3 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
201.66(c) and (d) for new OTC drug products	300	3	900	12	10,800
201.66(c) and (d) for new OTC sunscreen products	20	3	60	12	720
201.66(e)	1	0.125	0.125	24	3
Total					11,523

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

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[1] In a final rule published in the **Federal Register** of April 5, 2002, the Agency delayed the compliance dates for the 1999 labeling final rule for all OTC drug products that: (1) Contain no more than two doses of an OTC drug; and (2) because of their limited available labeling space, would require more than 60 percent of the total surface area available to bear labeling to meet the requirements set forth in § 201.66(d)(1) and (9) and, therefore, qualify for the labeling modifications currently set forth in § 201.66(d)(10) (67 FR 16304 at 16306). The Agency issued this delay in order to develop additional rulemaking for these "convenience size" products (December 12, 2006; 71 FR 74474). These products are not currently subject to the requirements of § 201.66. PRA approval for any requirements to which they may be subject in the future will be handled in a separate rulemaking.

Dated: March 29, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07369 Filed 3–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2012–N–0471, FDA–2012–N–0294]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB Control number	Date approval expires
Prescription Drug User Fee Cover Sheet; Form FDA 3397	0910–0297	3/31/2019
Food Additives; Food Contact Substances Notification System	0910–0495	3/31/2019

Dated: March 28, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–07363 Filed 3–31–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects (Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995), the Health Resources and Services Administration (HRSA) announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than May 31, 2016.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N–39, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Maternal, Infant, and Early Childhood Home Visiting Program Funding Opportunity Announcement for Formula Grant Awards OMB No. 0906–xxxx—New.

Abstract: The Maternal, Infant, and Early Childhood Home Visiting (Federal Home Visiting) Program, administered by the Health Resources and Services Administration (HRSA) in close partnership with the Administration for Children and Families (ACF), supports voluntary, evidence-based home visiting services during pregnancy and to parents with young children up to kindergarten entry. Formula grant awards support Federal Home Visiting Program grantees in meeting statutory and programmatic objectives for implementing high quality home visiting programs and coordinating with comprehensive statewide early childhood systems. All fifty states, the District of Columbia, five territories, and nonprofit organizations that would provide services in jurisdictions that have not directly applied for or been approved for a grant are eligible to receive formula grant awards. There are currently 56 entities with formula grant awards.

Need and Proposed Use of the Information: This information collection is requested for eligible entities to submit applications in response to annual formula Funding Opportunity Announcements (FOA) beginning in Fiscal Year (FY) 2017.

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act (ACA). Section 2951 of the ACA amended Title V of the Social Security Act by adding a new section, 511, which authorized the creation of the Federal Home Visiting Program. A portion of funding under this program is awarded to participating states and eligible jurisdictions using a funding formula. Formula funding is the main funding mechanism used by HRSA to provide support to eligible entities for the provision of voluntary high-quality home visiting services to families living in at-risk communities.

The information collected will be used to provide guidance to eligible entities on how to prepare and submit applications in response to annual

FOAs beginning in FY 2017. The application will provide project plans and budgets for upcoming years. This information will permit federal staff to assess whether the proposed activities align with statutory and programmatic requirements and objectives and will result in the implementation of a high-quality project. Applications in response to annual FOAs are submitted via Grants.gov.

Failure to collect this information would result in the inability of HRSA to collect information necessary for the determination of the responsiveness and quality of applications and would subject the government to undue risk in awarding formula funds under the Federal Home Visiting Program.

Applicants will be required to submit several types of information in addition to the SF–424 Forms which are included under a separate Information Collection Request. These types of information include: (1) Project Abstract, (2) Project Narrative, (3) Budget Justification, (4) Program-Specific Forms and Tables, and (5) Attachments.

Likely Respondents: Eligible entities under the Social Security Act, Title V, Section 511(c) (42 U.S.C., Section 711(c)), as added by Section 2951 of the ACA (Pub. L. 111–148).

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

Total Estimated Annualized burden hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Federal Home Visiting Program Formula Funding Opportunity Announcement	56	1	56	80	4,480
Total	56	1	56	80	4,480

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–07319 Filed 3–31–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, codified at 5 U.S.C. App.), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders in Newborns and Children.

Dates and Times: May 9, 2016, 9:00 a.m. to 5:00 p.m. (Meeting time is tentative.) May 10, 2016, 9:00 a.m. to 3:00 p.m. (Meeting time is tentative.)

Place: Webcast and In-Person, Fishers Lane Conference Center, Terrace Level, 5635 Fishers Lane, Rockville, MD 20852.

Status: The meeting will be open to the public with attendance limited to space availability. Participants also have the option of viewing the meeting via webcast. Whether attending in-person or via webcast, all participants must register for the meeting. The registration link will be made available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/.* The registration deadline is Friday, April 29, 2016, 11:59 p.m. Eastern Time.

Purpose: The Advisory Committee on Heritable Disorders in Newborns and Children (Committee), as authorized by Public Health Service Act, title XI, section 1111 (42 U.S.C. 300b–10), as amended by the Newborn Screening Saves Lives Reauthorization Act of 2014 (Pub. L. 113–240), was established to advise the Secretary of the Department of Health and Human Services about the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. In addition, the Committee's recommendations regarding additional conditions/heritable disorders for screening that have been adopted by the Secretary are included in the Recommended Uniform Screening Panel (RUSP) and constitute part of the comprehensive guidelines supported by the Health Resources and Services Administration. Pursuant to section 2713 of the Public Health Service Act, codified at 42 U.S.C. 300gg–13, non-grandfathered health plans and group and individual health insurance issuers are required to cover evidence-informed care and screenings included in the HRSA-supported comprehensive guidelines without charging a co-payment, co-insurance, or deductible for plan years (in the individual market, policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

Agenda: The Committee will hear presentations and discussions on topics including newborn screening long-term follow-up, the Newborn Sequencing in Genomic Medicine and Public Health projects, screening for lysosomal storage disorders, and prenatal education regarding newborn screening bloodspots. The Committee will also review draft reports from the Pilot Study and Cost Analysis workgroups and hear updates from the Committee's subcommittees on Laboratory Standards and Procedures, Follow-up and Treatment, and Education and Training Tentatively, the Committee is expected to review and/or vote on whether or not the nominated condition Guanidinoacetate Methyltransferase

Deficiency should be referred for a full evidence-based review. This vote does not involve a proposed addition of a condition to the Recommended Uniform Screening Panel. The meeting agenda will be available two (2) days prior to the meeting on the Committee's Web site: *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Public Comments: Members of the public may present oral comments and/or submit written comments. Comments are part of the official Committee record. The public comment period is tentatively scheduled for both days of the meeting. Advance registration is required to present oral comments and/or submit written comments. Registration information will be on the Committee Web site at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.* The registration deadline for public comments is of Friday April 29, 2016, 11:59 p.m. (Eastern Time). Written comments must be received by the deadline of Friday April 29, 2016, 11:59 p.m. (Eastern Time) in order to be included in the May meeting briefing book. Written comments should identify the individual's name, address, email, telephone number, professional or business affiliation, type of expertise (*i.e.,* parent, researcher, clinician, public health, etc.), and the topic/subject matter of comments. To ensure that all individuals who have registered to make oral comments can be accommodated, the allocated time may be limited. Individuals who are associated with groups or have similar interests may be requested to combine their comments and present them through a single representative. No audiovisual presentations are permitted. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below at least 10 days prior to the meeting. For additional information or questions on public comments, please contact Alaina Harris, Maternal and Child Health Bureau, Health Resources and Services Administration; phone: (301) 443–0721; or email: *aharris@hrsa.gov.*

Contact Person: Anyone interested in obtaining other relevant information should contact Alaina Harris, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18W66, 5600 Fishers Lane, Rockville, Maryland 20857; phone: (301) 443–0721; or email: *aharris@hrsa.gov.*

More information on the Advisory Committee is available at *http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders.*

Jackie Painter,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–07321 Filed 3–31–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Temporary Reassignment of State, Tribal, and Local Personnel During a Public Health Emergency

AGENCY: Office of the Secretary, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services, Office of the Secretary is announcing the availability of a final guidance entitled "Guidance for Temporary Reassignment of State, Tribal, and Local Personnel during a Public Health Emergency." Section 201 of the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (PAHPRA), Public Law 113–5, amends section 319 of the Public Health Service (PHS) Act to allow the Secretary of HHS, when she declares a public health emergency under section 319 of the PHS Act, to authorize, upon request by a state or tribal organization or their designee, the temporary reassignment of state, tribal, and local personnel funded through programs authorized under the PHS Act to immediately address a public health emergency in the state or Indian tribe. This final guidance addresses that provision.

ADDRESSES: Copy of the final guidance may be obtained at *www.PHE.gov!femporacyReassignment.*

Additional Information: For additional information, please contact: Lisa Kaplowitz, MD, MSHA, Deputy Assistant Secretary, Office of Policy and Planning, Office of the Assistant Secretary for Preparedness and Response, 200 Independence SW., Washington, DC 20004, telephone number (202) 205–2882.

SUPPLEMENTARY INFORMATION: Section 201 of PAHPRA, Public Law 113–5, amends section 319 of the PHS Act to allow the Secretary of HHS, when she declares a public health emergency under section 319 of the PHS Act, to authorize, upon request by a state or tribal organization or their designee, the temporary reassignment of state, tribal, and local personnel funded though programs authorized under the PHS Act to immediately address a public health emergency in the state or Indian tribe.

The PHS Act requires that HHS issue proposed guidance on this provision, to be followed by a 60-day public comment period. Consistent with this requirement, a notice appeared in the **Federal Register** on October 1, 2013 (78 FR 60283) notifying the public that HHS was accepting comments on such proposed guidance. This 60-day public comment period concluded in December 2013. There were nine submissions received in the public comment period. Five of the submissions were local governments, one state government, and three associations. Revisions made based on feedback received included setting timelines for HHS to review; standardizing the request template for states and Indian tribes, expanding the post event reporting requirements from 90 to 120 days, and clarifications on which Public Health Service programs were potentially affected.

The temporary reassignment provision is applicable to state, tribal, and local public health department or agency personnel whose positions are funded, in full or part, under PHS programs. This authority terminates on September 30, 2018.

This new provision provides an important flexibility to state and local health departments and tribal organizations during an event requiring all the resources at their disposal. The temporary reassignment provision permits state, tribal, and local personnel to be voluntarily reassigned so they can immediately respond to the public health emergency in the affected jurisdiction.

Dated: September 1, 2015.

Sylvia Burwell,

Secretary.

Editorial Note: This document was received for publication by the Office of the Federal Register on March 29, 2016.

[FR Doc. 2016–07404 Filed 3–31–16; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2016–0016]

Termination of the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection; Establishment of the Commercial Customs Operations Advisory Committee

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Committee management; notice of termination of the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection and establishment of the Commercial Customs Operations Advisory Committee.

SUMMARY: This notice announces the termination of the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection and the establishment of the Commercial Customs Operations Advisory Committee.

Background: Section 9503(c) of the Omnibus Budget Reconciliation Act of 1987, Pub.L. 100–203, Title IX, Subtitle F, § 9503(c), 101 Stat. 1330, 1330–381 (1987) (codified at 19 U.S.C. 2071 note), which established what is now the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection, was repealed by section 109 of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub.L. 114–125). Accordingly, the Advisory Committee on Commercial Operations to U.S. Customs and Border Protection is terminated. Section 109 also provides for the establishment of the Commercial Customs Operations Advisory Committee.

Establishment of a Commerical Customs Operations Advisory Committee: Section 109 of the Trade Facilitation and Trade Enforcement Act of 2015 (the Act) states, the Secretary of the Treasury and the Secretary of Homeland Security shall jointly establish a Commercial Customs Operations Advisory Committee (COAC). The COAC shall be comprised of 20 members, the Assistant Secretary for Tax Policy of the Department of the Treasury and the Commissioner, who shall jointly co-chair meetings of the COAC, and the Assistant Secretary for Policy of the Department of Homeland Security and the Director of U.S. Immigration and Customs Enforcement, who shall serve as deputy co-chairs of meetings of the COAC.

The COAC members shall be appointed by the Secretary of the Treasury and the Secretary of Homeland Security. The membership is representative of individuals and firms affected by the commercial operations of U.S. Customs and Border Protection (CBP) and without regard to political affiliation. Each individual appointed to the COAC shall be appointed for a term of not more than 3 years, and may be reappointed to subsequent terms, but may not serve more than 2 terms sequentially. The Secretary of the Treasury and the Secretary of Homeland Security may transfer members serving on what is now the Advisory Committee on Commercial Operations, established under section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 2071 note) on the day before the date of the enactment of the Act to the Commercial Customs Operations Advisory Committee.

The COAC shall advise the Secretaries of the Department of the Treasury and the Department of Homeland Security on all matters involving the commercial operations of CBP, including advising with respect to significant changes that are proposed with respect to regulations, policies, or practices of CBP. The COAC will provide recommendations to the Secretary of the Treasury and the Secretary of Homeland Security on improvements to the commercial operations of CBP.

The COAC shall meet at the call of the Secretary of the Treasury and the Secretary of Homeland Security, or at the call of not less than ⅔ of the membership of the COAC. The COAC shall meet at least 4 times each calendar year.

Not later than December 31, 2016, and annually thereafter, the COAC shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that describes the activities of the COAC during the preceding fiscal year, and sets forth any recommendations of the COAC regarding the commercial operations of CBP.

Effective on the date on which the Advisory Committee is established, section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 2071 note) is repealed. Any reference in law to the Advisory Committee on Commercial Operations of the United States Customs Service established under section 9503(c) of the Omnibus Budget Reconciliation Act of 1987 (19 U.S.C. 2071 note) made on or after the date on which the Advisory Committee is established, shall be deemed a reference to the Commercial Customs Operations Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344–1661; facsimile (202) 325–4290.

Dated: March 29, 2016.

Maria Luisa Boyce,

Senior Advisor for Private Sector Engagement, Office of Trade Relations.

[FR Doc. 2016–07388 Filed 3–31–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0023]

Agency Information Collection Activities: Request for Information

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Request for Information. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before May 31, 2016 to be assured of consideration.

ADDRESSES: Written comments may be mailed to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Request for Information.

OMB Number: 1651–0023.

Form Number: CBP Form 28.

Abstract: Under 19 U.S.C. 1500 and 1401a, Customs and Border Protection (CBP) is responsible for appraising imported merchandise by ascertaining its value; classifying the merchandise under the tariff schedule; and assessing a rate and amount of duty to be paid. On occasions when the invoice or other documentation does not provide sufficient information for appraisement or classification, CBP may request additional information through the use of CBP Form 28, *Request for Information.* This form is sent by CBP personnel to importers, or their agents, requesting additional information. CBP Form 28 is provided for by 19 CFR 151.11. A copy of this form and instructions are available at *http://forms.cbp.gov/pdf/CBP_Form_28.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 60,000.

Dated: March 28, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–07386 Filed 3–31–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4265–DR; Docket ID FEMA–2016–0001]

Delaware; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Delaware (FEMA–4265–DR), dated March 16, 2016, and related determinations.

DATES: *Effective Date:* March 16, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 2016, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

> I have determined that the damage in certain areas of the State of Delaware resulting from a severe winter storm and flooding during the period of January 22–23, 2016, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Delaware.
>
> In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.
>
> You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, with the exception of projects that meet the eligibility criteria for a higher Federal cost-sharing percentage under the Public Assistance Alternative Procedures Pilot Program for Debris Removal implemented pursuant to section 428 of the Stafford Act.
>
> Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following area of the State of Delaware has been designated as adversely affected by this major disaster:

Sussex County for Public Assistance.

All areas within the State of Delaware are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07392 Filed 3–31–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4258–DR; Docket ID FEMA–2016–0001]

Oregon; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oregon (FEMA–4258–DR), dated February 17, 2016, and related determinations.

DATES: *Effective Date:* March 16, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oregon is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 17, 2016.

Douglas County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07396 Filed 3–31–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 10, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arkansas:					
Benton (FEMA Docket No.: B–1549).	City of Rogers (15–06–0704P).	The Honorable Greg Hines, Mayor, City of Rogers, 301 West Chestnut Street, Rogers, AR 72756.	City Hall, 301 West Chestnut Street, Rogers, AR 72756.	Jan. 6, 2016	050013
Washington (FEMA Docket No.: B–1549).	City of Fayetteville (14–06–3204P).	The Honorable Lioneld Jordan, Mayor, City of Fayetteville, 113 West Mountain Street, Fayetteville, AR 72701.	City Hall, 113 West Mountain Street, Fayetteville, AR 72701.	Jan. 25, 2016	050216
Colorado:					
Arapahoe (FEMA Docket No.: B–1549).	Unincorporated areas of Arapahoe County (15–08–0217P).	The Honorable Nancy N. Sharpe, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80120.	Arapahoe County Public Works and Development Department, 10730 East Briarwood Avenue, Centennial, CO 80112.	Jan. 15, 2016	080011
El Paso (FEMA Docket No.: B–1549).	City of Colorado Springs (15–08–0117P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Suite 601, Colorado Springs, CO 80901.	City Hall, 30 South Nevada Avenue, Colorado Springs, CO 80901.	Jan. 13, 2016	080060

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Broomfield (FEMA Docket No.: B–1549).	City and County of Broomfield (15–08–0066P).	The Honorable Randy Ahrens, Mayor, City of Broomfield, 1901 Aspen Street, Broomfield, CO 80020.	City Hall, 1 Descombes Drive, Broomfield, CO 80020.	Jan. 11, 2016	085073
Jefferson (FEMA Docket No.: B–1549).	City of Lakewood (15–08–0111P).	The Honorable Bob Murphy, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, CO 80226.	Public Works Department, 480 South Allison Parkway, Lakewood, CO 80226.	Jan. 22, 2016	085075
Jefferson (FEMA Docket No.: B–1549).	City of Westminster (15–08–0066P).	The Honorable Herb Atchison, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	City Hall, 4800 West 92nd Avenue, Westminster, CO 80031.	Jan. 11, 2016	080008
Delaware: Kent (FEMA Docket No.: B–1549).	Unincorporated areas of Kent County (15–03–0350P).	The Honorable P. Brooks Banta, President, Kent County Board of Commissioners, 555 Bay Road, Dover, DE 19901.	Kent County Public Works Department, 555 Bay Road, Dover, DE 19901.	Jan. 29, 2016	100001
Florida:					
Charlotte (FEMA Docket No.: B–1549).	City of Punta Gorda (15–04–4050P).	The Honorable Carolyn Freeland, Mayor, City of Punta Gorda, 326 West Marion Avenue, Punta Gorda, FL 33950.	City Hall, 126 Harvey Street, Punta Gorda, FL 33950.	Jan. 22, 2016	120062
Collier (FEMA Docket No.: B–1554).	City of Marco Island (15–04–6066P).	The Honorable Larry Sacher, Chairman, City of Marco Island Council, 50 Bald Eagle Drive, Marco Island, FL 34145.	City Hall, 50 Bald Eagle Drive, Marco Island, FL 34145.	Feb. 1, 2016	120426
Collier (FEMA Docket No.: B–1554).	City of Naples (15–04–3687P).	The Honorable John Sorey III, Mayor, City of Naples, 735 8th Street South, Naples, FL 34102.	Planning Department, 295 Riverside Circle, Naples, FL 34102.	Feb. 8, 2016	125130
Lee (FEMA Docket No.: B–1554).	City of Bonita Springs (15–04–7945P).	The Honorable Ben L. Nelson, Jr., Mayor, City of Bonita Springs, 9101 Bonita Beach Road,, Bonita Springs, FL 34135.	Community Development Department, 9220 Bonita Beach Road, Bonita Springs, FL 34135.	Feb. 5, 2016	120680
Manatee (FEMA Docket No.: B–1549).	Town of Longboat Key (15–04–1422P).	The Honorable Jack Duncan, Mayor, Town of Longboat Key, 501 Bay Isles Road, Longboat Key, FL 34228.	Town Hall, 600 General Harris Street, Longboat Key, FL 34228.	Jan. 19, 2016	125126
Manatee (FEMA Docket No.: B–1549).	Unincorporated areas of Manatee County (15–04–1422P).	The Honorable Betsy Benac, Chair, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206.	Manatee County Public Works Department, 1022 26th Avenue, East, Bradenton, FL 34205.	Jan. 19, 2016	120153
Martin (FEMA Docket No.: B–1554).	City of Stuart (15–04–4536P).	The Honorable Kelli Glass Leighton, Mayor, City of Stuart, 121 Southwest Flagler Avenue, Stuart, FL 34994.	City Hall, 121 Southwest Flagler Avenue, Stuart, FL 34994.	Jan. 29, 2016	120165
Miami-Dade (FEMA Docket No.: B–1549).	City of Miami (15–04–5201P).	The Honorable Tomas P. Regalado, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL 33133.	City Hall, 444 Southwest 2nd Avenue, Miami, FL 33130.	Jan. 26, 2016	120650
Miami-Dade (FEMA Docket No.: B–1554).	City of Miami Beach (15–04–3498P).	The Honorable Philip Levine, Mayor, City of Miami Beach, 1700 Convention Center Drive, Miami Beach, FL 33139.	City Hall, 1700 Convention Center Drive, Miami Beach, FL 33139.	Feb. 5, 2016	120651
Monroe (FEMA Docket No.: B–1549).	Village of Islamorada (15–04–4517P).	The Honorable Mike Forster, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Village Hall, 86800 Overseas Highway, Islamorada, FL 33036.	Jan. 14, 2016	120424
Monroe (FEMA Docket No.: B–1549).	Unincorporated areas of Monroe County (15–04–3973P).	The Honorable Danny Kolhage, Mayor, Monroe County, 530 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Jan. 29, 2016	125129
Monroe (FEMA Docket No.: B–1554).	Unincorporated areas of Monroe County (15–04–7977P).	The Honorable Danny Kolhage, Mayor, Monroe County Board of Commissioners, 530 Whitehead Street, Suite 102, Key West, FL 33040.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	Feb. 8, 2016	125129
Orange (FEMA Docket No.: B–1549).	Unincorporated areas of Orange County (15–04–1610P).	The Honorable Teresa Jacobs, Mayor, Orange County, 201 South Rosalind Avenue, 5th Floor, Orlando, FL 32801.	Orange County Public Works Department, 4200 South John Young Parkway, Orlando, FL 32839.	Jan. 28, 2016	120179
Osceola (FEMA Docket No.: B–1549).	Unincorporated areas of Osceola County (15–04–1788P).	The Honorable Brandon Arrington, Chairman, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Division, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	Jan. 8, 2016	120189
Seminole (FEMA Docket No.: B–1549).	City of Lake Mary (15–04–5338P).	The Honorable David J. Mealor, Mayor, City of Lake Mary, 100 North Country Club Road, Lake Mary, FL 32746.	City Hall, 911 Wallace Court, Lake Mary, FL 32746.	Jan. 28, 2016	120416
Georgia:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Douglas (FEMA Docket No.: B–1549).	City of Douglasville (15–04–4421P).	The Honorable Harvey Persons, Mayor, City of Douglasville, 6695 Church Street, Douglasville, GA 30134.	Building Department, 6695 Church Street, Douglasville, GA 30134.	Jan. 25, 2016	130305
Douglas (FEMA Docket No.: B–1549).	Unincorporated areas of Douglas County (15–04–4421P).	The Honorable Tom Worthan, Chairman, Douglas County Board of Commissioners, 8700 Hospital Drive, 3rd Floor, Douglasville, GA 30134.	Douglas County Development Services Department, 8700 Hospital Drive, 1st Floor, Douglasville, GA 30134.	Jan. 25, 2016	130306
Mississippi: Harrison (FEMA Docket No.:B–1549).	City of Gulfport (15–04–4242P).	The Honorable Billy Hewes, Mayor, City of Gulfport, P.O. Box 1780, Gulfport, MS 39501.	City Hall, 1410 24th Avenue, Gulfport, MS 39501.	Jan. 15, 2016	285253
Montana:					
Powder River (FEMA Docket No.:B–1538).	Town of Broadus (14–08–0420P).	The Honorable Milton L. Amsden, Mayor, City of Broadus, P.O. Box 659, Broadus, MT 59317.	Town Clerk's Office, P.O. Box 659, Broadus, MT 59317.	Jan. 20, 2016	300058
Powder River (FEMA Docket No.:B–1538).	Unincorporated areas of Powder River County (14–08–0420P).	Mr. Darold Zimmer, Chairman, Powder River County Board of Commissioners, P.O. Box 200, Broadus, MT 59317.	Powder River County Clerk and Recorder's Office, P.O. Box 200, Broadus, MT 59317.	Jan. 20, 2016	300163
Yellowstone (FEMA Docket No.: B–1549).	City of Laurel (15–08–1029P).	The Honorable Mark Mace, Mayor, City of Laurel, 803 West 4th Street, Laurel, MT 59044.	City Planner's Office, 115 West 1st Street, Laurel, MT 59044.	Jan. 8, 2016	300086
New Mexico: Bernalillo (FEMA Docket No.: B–1554).	City of Albuquerque (15–06–0268P).	The Honorable Richard J. Berry, Mayor, City of Albuquerque, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Development and Review Services Division, 600 2nd Street Northwest, Suite 201, Albuquerque, NM 87102.	Feb. 3, 2016	350002
North Carolina:					
Wake (FEMA Docket No.: B–1554).	Town of Holly Springs (15–04–6644P).	The Honorable Richard G. Sears, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, NC 27540.	Engineering Department, 128 South Main Street, Holly Springs, NC 27540.	Feb. 4, 2016	370403
Wake (FEMA Docket No.: B–1554).	Unincorporated areas of Wake County (15–04–6644P).	The Honorable James West, Chairman, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Wake County Environmental Services Department, 336 Fayetteville Street, Raleigh, NC 27602.	Feb. 4, 2016	370368
North Dakota:					
McKenzie (FEMA Docket No.: B–1549).	City of Watford City (15–08–0808P).	The Honorable Brent Sanford, Mayor, City of Watford City, P.O. Box 422, Watford City, ND 58854.	Planning and Zoning Department, 213 2nd Street Northeast, Watford City, ND 58854.	Jan. 28, 2016	380344
McKenzie (FEMA Docket No.: B–1549).	Unincorporated areas of McKenzie County (15–08–0808P).	The Honorable Richard Cayko, Chairman, McKenzie County Board of Commissioners, 201 5th Street Northwest, Suite 543, Watford City, ND 58854.	McKenzie County Planning and Zoning Department, 201 5th Street Northwest, Suite 699, Watford City, ND 58854.	Jan. 28, 2016	380054
Pennsylvania: Westmoreland (FEMA Docket No.: B–1549).	Borough of Irwin (14–03–1433P).	The Honorable Robert Wayman, Mayor, Borough of Irwin, 424 Main Street, Irwin, PA 15642.	Borough Hall, 424 Main Street, Irwin, PA 15642.	Jan. 21, 2016	420881
South Carolina:					
Charleston (FEMA Docket No.: B–1549).	Town of Mount Pleasant (15–04–5450P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Town Hall, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Jan. 13, 2016	455417
Charleston (FEMA Docket No.: B–1549).	Town of Mount Pleasant (15–04–7267P).	The Honorable Linda Page, Mayor, Town of Mount Pleasant, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Town Hall, 100 Ann Edwards Lane, Mount Pleasant, SC 29464.	Jan. 15, 2016	455417
Charleston (FEMA Docket No.: B–1549).	Unincorporated areas of Charleston County (15–04–7267P).	The Honorable J. Elliot Summey, Chairman, Charleston County Council, 4045 Bridgeview Drive, North Charleston, SC 29405.	Charleston County, Planning and Zoning Department, 4045 Bridgeview Drive, North Charleston, SC 29405.	Jan. 15, 2016	455413
Texas:					
Bexar (FEMA Docket No.: B–1549).	City of Castle Hills (14–06–2603P).	The Honorable Timothy A. Howell, Mayor, City of Castle Hills, 209 Lemonwood Drive, Castle Hills, TX 78213.	City Hall, 6915 West Avenue, Castle Hills, TX 78213.	Jan. 25, 2016	480037
Bexar (FEMA Docket No.: B–1549).	City of San Antonio (14–06–2603P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P. O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78284.	Jan. 25, 2016	480045
Bexar (FEMA Docket No.: B–1554).	City of San Antonio (15–06–0789P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78284.	Feb. 4, 2016	480045
Bexar (FEMA Docket No.: B–1554).	City of San Antonio (15–06–2623P).	The Honorable Ivy R. Taylor, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78284.	Feb. 3, 2016	480045

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Collin (FEMA Docket No.: B–1549).	Town of Prosper (15–06–0487P).	The Honorable Ray Smith, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	Engineering Services Department, 407 East 1st Street, Prosper, TX 75078.	Jan. 28, 2016	480141
Dallas (FEMA Docket No.: B–1549).	City of Cedar Hill (15–06–1030P).	The Honorable Rob Franke, Mayor, City of Cedar Hill, 285 Uptown Boulevard, Building 100, Cedar Hill, TX 75104.	City Hall, 285 Uptown Boulevard, Building 100, Cedar Hill, TX 75104.	Jan. 7, 2016	480168
Denton (FEMA Docket No.: B–1549).	Town of Prosper (15–06–1600P).	The Honorable Ray Smith, Mayor, Town of Prosper, P.O. Box 307, Prosper, TX 75078.	Engineering Services Department, 407 East 1st Street, Prosper, TX 75078.	Jan. 21, 2016	480141
El Paso (FEMA Docket No.: B–1554).	City of El Paso (15–06–1599P).	The Honorable Oscar Leeser, Mayor, City of El Paso, 300 North Campbell Street, El Paso, TX 79901.	City Hall, 300 North Campbell Street, El Paso, TX 79901.	Feb. 5, 2016	480214
Harris (FEMA Docket No.: B–1545).	Unincorporated areas of Harris County (15–06–1734P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.	Jan. 11, 2016	480287
McLennan (FEMA Docket No.: B–1549).	City of Waco (15–06–1601P)..	The Honorable Malcolm Duncan, Jr., Mayor, City of Waco, P.O. Box 2570, Waco, TX 76702.	Engineering Department, 401 Franklin Avenue, Waco, TX 76701.	Jan. 22, 2016	480461
McLennan (FEMA Docket No.: B–1549).	Unincorporated areas of McLennan County (15–06–1601P).	The Honorable Scott Felton, McLennan County Judge, 501 Washington Avenue, Waco, TX 76701.	McLennan County Engineering Department, 215 North 5th Street, Suite 130, Waco, TX 76701.	Jan. 22, 2016	480456
Williamson (FEMA Docket No.: B–1554).	City of Leander (14–06–2567P).	The Honorable Christopher Fielder, Mayor, City of Leander, 200 West Willis Street, Leander, TX 78641.	City Hall, 200 West Willis Street, Leander, TX 78641.	Feb. 5, 2016	481536
Utah:					
Carbon (FEMA Docket No.: B–1545).	City of Price (15–08–0486P).	The Honorable Joe Piccolo, Mayor, City of Price, 185 East Main Street, Price, UT 84501.	City Hall, 185 East Main Street, Price, UT 84501.	Jan. 6, 2016	490036
Washington (FEMA Docket No.: B–1549).	City of Washington (15–08–0247P).	The Honorable Ken Neilson, Mayor, City of Washington, 111 North 100 East, Washington, UT 84780.	Planning and Zoning Department, 111 North 100 East, Washington, UT 84780.	Jan. 27, 2016	490182
Virginia: Fairfax (FEMA Docket No.: B–1549).	Unincorporated areas of Fairfax County (15–03–1596P).	The Honorable Edward L. Long, Jr., Fairfax County Executive, 12000 Government Center Parkway, Fairfax, VA 22035.	Fairfax County Planning and Zoning Department, 12000 Government Center Parkway, Fairfax, VA 22035.	Jan. 7, 2016	515525

[FR Doc. 2016–07391 Filed 3–31–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4255–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4255–DR), dated February 9, 2016, and related determinations.

DATES: *Effective Date:* March 15, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 9, 2016.

Borden, Cass, Collingsworth, Cottle, Crosby, Delta, Donley, Fisher, Floyd, Foard, Franklin, Haskell, Hockley, Jones, Knox, Leon, Motley, Nolan, Scurry, Shackelford, Stonewall, Terry, Trinity, Walker, Wheeler, and Wilbarger Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07393 Filed 3–31–16; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2015–0020]

Recovery Policy: Stafford Act Section 705, Disaster Grant Closeout Procedures

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of the final policy FP 205–081–2, Stafford Act Section 705, *Disaster Grant Closeout Procedures.* The Federal Emergency Management Agency (FEMA) published a notice of availability and request for

comment for the proposed policy on September 30, 2015 at 80 FR 58751.

DATES: This policy is effective March 31, 2016.

ADDRESSES: This final policy is available at *http://www.regulations.gov* under docket ID FEMA–2015–0020 and on FEMA's Web site at *http://www.fema.gov.* The proposed and final policy, all related **Federal Register** notices, and all public comments received during the comment period are available at *http://www.regulations.gov* under docket ID FEMA–2015–0020. You may also view a hard copy of the final policy at the Office of Chief Counsel, Federal Emergency Management Agency, 500 C St. SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: William Roche, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–212–2340.

SUPPLEMENTARY INFORMATION: This policy clarifies FEMA's requirements under Section 705 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Act), and establishes the guidelines to determine whether Section 705 applies to prohibit FEMA from recovering payments made under the Public Assistance Program. The substantive change to this final policy from the proposed policy that was published in the **Federal Register** on September 30, 2015 is the guidance for determining when payment has been made under the Act. The final policy establishes in policy Section VII.B.1.a that "Payment has occurred when the recipient draws down funds obligated for the completion of the approved scope of work through SmartLink." This is a revision to the proposed policy which stated that payment occurred when the recipient or pass through entity had drawn down *all* funds necessary to complete the approved scope of work through SmartLink (emphasis added). The final policy further clarifies that if Section 705(c) applies, FEMA is prohibited from recovering payments made (*e.g.,* the amount of funds drawn down by the recipient in association with completion of the approved scope of work), but that FEMA is not prohibited from deobligating funds that the recipient has not drawn down. The final policy also adds language explicitly establishing that when Section 705(a) *Statute of Limitations* applies to prohibit FEMA from directly recovering subject payments, FEMA will still pursue administrative offset as appropriate pursuant to the Debt Collection Improvement Act of 1996, as amended, unless Section 705(c) prohibits the recovery of funds.

The final policy does not have the force or effect of law.

Authority: 42 U.S.C. 5205.

Dated: March 29, 2016.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–07453 Filed 3–31–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2016–0017]

Committee name: Homeland Security Academic Advisory Council

AGENCY: Department of Homeland Security.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Academic Advisory Council (HSAAC) will meet on April 20, 2016 in Washington, DC. The meeting will be open to the public.

DATES: The HSAAC will meet Wednesday, April 20, 2016, from 10:00 a.m. to 3:30 p.m. Please note that the meeting may close early if the Council has completed its business.

ADDRESSES: The meeting will be held at the Tomich Conference Center, 111 Massachusetts Ave NW., Washington, DC 20529. All visitors to the Tomich Conference Center must bring a Government-issued photo ID.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, send an email to *AcademicEngagement@hq.dhs.gov* or contact Lindsay Burton at 202–447–4686 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the Council prior to the adoption of the recommendations as listed in the **SUPPLEMENTARY INFORMATION** section below. Comments must be submitted in writing no later than Tuesday, April 13, 2016, must include DHS–2016–0017 as the identification number, and may be submitted using *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *AcademicEngagement@hq.dhs.gov.* Include the docket number in the subject line of the message.
- Fax: 202–282–1044
- Mail: Academic Engagement; Office of Academic Engagement/Mailstop 385; Department of Homeland Security; 245 Murray Lane SW., Washington, DC 20528–0440.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket, to read background documents or comments received by the HSAAC, go to *http://www.regulations.gov* and search for "Homeland Security Academic Advisory Council" then select the notice dated April 20, 2016.

One thirty-minute public comment period will be held during the meeting on April 20, 2016 after the conclusion of the presentation of draft recommendations, but before the Council deliberates. Speakers will be requested to limit their comments to three minutes. Contact the Office of Academic Engagement as indicated below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Lindsay Burton, Office of Academic Engagement/Mailstop 385; Department of Homeland Security; 245 Murray Lane SW., Washington, DC 20528–0440, email: *AcademicEngagement@hq.dhs.gov,* telephone: 202–447–4686 and fax: 202–282–1044.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. Appendix. The HSAAC provides advice and recommendations to the Secretary and senior leadership on matters relating to student and recent graduate recruitment; international students; academic research; campus and community resiliency, security and preparedness; faculty exchanges; and cybersecurity.

Agenda: The six Council subcommittees (Student and Recent Graduate Recruitment, Homeland Security Academic Programs, Academic Research and Faculty Exchange, International Students, Campus Resilience, and Cybersecurity) will give progress reports and may present draft recommendations for action in response to the taskings issued by the Department. DHS senior leadership will provide an update on the Department's efforts in implementing the Council's approved recommendations as well as its recent initiatives with the academic community.

The meeting materials will be posted to the Council Web site at: *http://www.dhs.gov/homeland-security-academic-advisory-council-hsaac* on or before April 15, 2016.

Responsible DHS Official: Alaina Clark, *AcademicEngagement@hq.dhs.gov*, 202–447–4686.

Dated: March 17, 2016.

Alaina Clark,

Acting Designated Federal Officer, Homeland Security Academic Advisory Council.

[FR Doc. 2016–06644 Filed 3–31–16; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 24, 2016.

Tonya Proctor,

Deputy Director, Office of Special Needs Assistance Programs.

[FR Doc. 2016–07059 Filed 3–31–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N056; 40120–1112–0000–F2]

Receipt of Applications for Endangered Species Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive written data or comments on the applications at the address given in **ADDRESSES** by May 2, 2016.

ADDRESSES: Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345 (Attn: James Gruhala, Permit Coordinator).

FOR FURTHER INFORMATION CONTACT: James Gruhala, 10(a)(1)(A) Permit Coordinator, telephone 404–679–7097; facsimile 404–679–7081.

SUPPLEMENTARY INFORMATION: The public is invited to comment on the following applications for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR 17. This notice is provided under section 10(c) of the Act.

If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Fish and Wildlife Service's Regional Office (see **ADDRESSES**) or send them via electronic mail (email) to *permitsR4ES@fws.gov*. Please include your name and return address in your email message. If you do not receive a confirmation from the Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number in **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand-deliver comments to the Fish and Wildlife Service office in **ADDRESSES**.

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit Applications

Permit Application Number: TE 83011B–0

Applicant: Prescott Weldon, Bristol, Virginia

The applicant requests a permit to take (enter hibernacula or maternity roost caves; capture with mist-nets, harp traps, or by hand; collect biometric data, tissue, and/or hair; band; and radio-tag) gray bats (*Myotis grisescens*), Indiana bats (*Myotis sodalis*), northern long-eared bats (*Myotis septentrionalis*), and Virginia big-eared bats (*Corynorhinus townsendii virginianus*), for presence/absence surveys, population monitoring, and research purposes throughout these species' ranges.

Permit Application Number: TE 83013B–0

Applicant: Kathleen O'Connor, Syracuse, New York

The applicant requests a permit to take (enter hibernacula or maternity roost caves; capture with mist-nets, harp traps, or by hand; collect biometric data, tissue, and/or hair; band; and radio-tag) Indiana bats and northern long-eared bats for presence/absence surveys, population monitoring, and research purposes throughout these species' ranges.

Permit Application Number: TE 53149B–1

Applicant: Hans Otto, Omaha, Nebraska

The applicant requests to amend their permit to take (capture with mist-net and harp trap, handle, band, and radio tag) Indiana bat, northern long-eared bat, gray bat, Ozark big-eared bat (*Corynorhinus townsendii ingens*), and Virginia big-eared bat throughout the species' ranges for conducting presence/absence surveys, studies to document habitat use, and population monitoring.

The applicant requests additional authorizations to take (capture with mist-net, harp trap, and hand nets; handle; measure; collect hair samples, fecal material, and pollen samples; take wing biopsy tissue samples; band, radio tag, light tag, and pit tag) the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) for conducting presence/absence surveys, studies to document habitat use, and population monitoring in Arizona. The applicant also requests to take (capture with live traps, handle, and take measurements), the New Mexico jumping mouse (*Zapus hudsonius luteus*) for conducting presence/absence surveys, studies to document habitat use, and population monitoring in Arizona, Colorado, and New Mexico.

Permit Application Number: TE 206872–7

Applicant: Joy O'Keefe, Terre Haute, Indiana

The applicant requests a permit to take (enter hibernacula or maternity roost caves; capture with mist-nets and harp traps; collect biometric data, tissue, and/or hair; band; and radio-tag) gray bats, Indiana bats, northern long-eared bats, and Virginia big-eared bats for presence/absence surveys, population monitoring, and research purposes throughout these species' ranges.

Permit Application Number: TE 83000B–0

Applicant: Jason Weese, Midway, Kentucky

The applicant requests a permit to take (enter hibernacula or maternity roost caves; capture with mist-nets and harp traps; collect biometric data, tissue, and/or hair; band; and radio-tag) gray bats, Indiana bats, northern long-eared bats, and Virginia big-eared bats for presence/absence surveys, population monitoring, and research purposes throughout the Commonwealth of Kentucky.

Permit Application Number: TE 12392A–2

Applicant: Institute for Marine Mammal Studies, Gulfport, Mississippi

The applicant requests renewal of their permit to continue flipper-tagging and attaching Passive Integrated Transponders (PIT) tags to Kemps ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and olive ridley (*Lepidochelys olivacea*) sea turtles prior to release following veterinary treatment and rehabilitation at their facility.

Permit Application Number: TE 48579B–1

Applicant: Ecological Solutions, Inc., Roswell, Georgia

The applicant requests an amendment of their current permit, which authorizes the following activities in the State of Georgia alone: Take (enter hibernacula or maternity roost caves, salvage dead bats, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio-tag, light-tag, and wing-punch) Indiana bats, gray bats, and northern long-eared bats while conducting presence/absence surveys, studies to document habitat use, and population monitoring. The applicant has requested authorization to swab the above-listed bats for white-nose syndrome studies and to conduct all activities in Alabama, North Carolina, South Carolina, and Tennessee, in addition to Georgia.

Permit Application Number: TE 37661B–1

Applicant: Deep South Eco Group, Morton, Mississippi

The applicant requests an amendment of their current permit, which authorizes the following activities in the states of Louisiana and Mississippi: Take (capture with mist nets, handle, identify, and release) Indiana bats and northern long-eared bats for the purpose of conducting presence/absence surveys. The applicant has requested authorization to conduct the above-listed activities in the State of Arkansas as well.

Permit Application Number: TE 88778B–0

Applicant: John Lamb, Arnold Air Force Base, Tennessee

The applicant requests a permit to take (enter hibernacula or maternity roost caves; capture with mist-nets, with harp traps, or by hand; collect biometric data, tissue, and/or hair; band; and radio-tag) gray bats, Indiana bats, northern long-eared bats, and Virginia big-eared bats, for presence/absence surveys, population monitoring, and research purposes throughout the State of Tennessee.

Permit Application Number: TE 88797B–0

Applicant: Amber Nolder, Luthersburg, Pennsylvania

The applicant requests a permit to take (enter hibernacula or maternity roost caves; capture with mist-nets or harp traps; collect biometric data, tissue, and/or hair; band; and radio-tag) Indiana bats and northern long-eared bats, for presence/absence surveys, population monitoring, and research purposes throughout these species' ranges.

Permit Application Number: TE 88809B–0

Applicant: Ray Eaton, Berea, Kentucky

The applicant requests a permit to take (capture with mist-net and harp trap; handle; band; and radio tag) Indiana bat, northern long-eared bat, gray bat, Ozark big-eared bat, and Virginia big-eared bat throughout the species' ranges for conducting presence/absence surveys, studies to document habitat use, and population monitoring. The applicant requests additional authorizations to take (capture with mist-net, harp trap, and hand nets; handle; measure; collect hair samples, fecal material, and pollen samples; take wing biopsy tissue samples; and band, radio tag, light tag, and pit tag) the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) for conducting presence/absence surveys, studies to document habitat use, and population monitoring in Arizona, New Mexico, and Texas.

Permit Application Number: TE 88811B–0

Applicant: James Thacker, Tennessee Tech University, Cookeville, Tenneessee

The applicant requests a permit to take (reduce to possession) seeds of the Short's bladderpod (*Physaria globosa*), an endangered plant, for growth, fecundity, germination, seed viability, and ecological relationship studies in the State of Tennessee.

Permit Application Number: TE 88823–B

Applicant: Brian Schaetz, Raleigh, North Carolina

The applicant requests a permit to take (enter hibernacula or maternity roost caves; capture with mist-nets or harp traps; collect biometric data, tissue, and/or hair; band; and radio-tag) gray bats, Indiana bats, and northern long-eared bats, for presence/absence surveys, population monitoring, and research purposes in the States of Alabama, Georgia, North Carolina, and South Carolina.

Permit Application Number: TE 88817B–0

Applicant: Archer Larned, University of Maryland Baltimore County

The applicant requests a permit to take (capture with mist-nets, band, song playback experiments) the endangered Florida grasshopper sparrow (*Ammodramus savannarum floridanus*) for a multi-part behaviorial ecology study in the State of Florida.

Permit Application Number: TE 125620–4

Applicant: Brian Roh, Burns & McDonnel Environmental Consulting, Kansas City, Missouri

The applicant requests an amendment to their permit to take (capture, handle, release) the federally endangered American burying beetle (*Nicrophorus americanus*) for the purpose of conducting presence/absence surveys in the States of Arkansas, Kansas, Nebraska, Oklahoma, and South Dakota.

Permit Application Number: TE 91373A–3

Applicant: Jonathan Miller, Brundidge, Alabama

The applicant requests to amend their current permit to take (capture, identify, release) additional species of federally listed mussels for the purpose of conducting presence/absence surveys in the States of Alabama, Florida, Georgia, Mississippi, and Louisiana.

Permit Application Number: TE 91366A–3

Applicant: Paul Stewart, Troy, Alabama

The applicant requests to amend their current permit to take (capture, identify, release) additional species of federally listed mussels for the purpose of conducting presence/absence surveys in the States of Alabama, Florida, Georgia, Mississippi, and Louisiana.

Permit Application Number: TE 54578B–1

Applicant: Mary Frazer, Raleigh, North Carolina

The applicant requests a permit to take (capture with mist-net and harp trap, handle, band, and radio tag) Indiana bat, northern long-eared bat, gray bat, and Virginia big-eared bat throughout the species' ranges for conducting presence/absence surveys, studies to document habitat use, and population monitoring.

Permit Application Number: TE 63633A–3

Applicant: Biodiversity Research Institute, Portland, Maine

The applicant requests to amend their current permit to take (capture with mist nets, handle, identify, and release) Indiana bats and northern long-eared bats for the purpose of conducting presence/absence surveys, population monitoring, and research purposes throughout the species' range.

Permit Application Number: TE 13844A–3

Applicant: Tony Miller, Lexington, Kentucky

The applicant requests to amend their permit to take (enter hibernacula or maternity roost caves; capture with mist-nets and harp traps; collect biometric data, tissue, and/or hair; band; and radio-tag) gray bats, Indiana bats, northern long-eared bats, and Virginia big-eared bats for presence/absence surveys, population monitoring, and research purposes throughout the species' range.

Permit Application Number: TE 91733B–0

Applicant: Joshua Adams, Lexington, Kentucky

The applicant requests a permit to take (capture with mist-net and harp trap, handle, band, and radio tag) Indiana bat, northern long-eared bat, gray bat, Ozark big-eared bat, and Virginia big-eared bat throughout the species' ranges for conducting presence/absence surveys, studies to document habitat use, and population monitoring. The applicant requests additional authorizations to take (capture with electrofishing and seining) the blackside dace (*Chrosomus cumberlandensis*) and the Kentucky arrow darter (*Etheostoma spilotum*) for conducting presence/absence surveys, studies to document habitat use, and population monitoring in Kentucky and Tennessee.

Permit Application Number: TE 91755B–0

Applicant: Nathan Clink, Frankfort, Kentucky

The applicant requests a permit to take (capture, identify, and release) several species of federally listed mussels for the purpose of conducting presence/absence surveys in the Commonwealth of Kentucky.

Dated: March 28, 2016.

Franklin J. Arnold III,

Acting Assistant Regional Director, Ecological Services, Southeast Region.

[FR Doc. 2016–07390 Filed 3–31–16; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N220; FXES11130000–156–FF08E00000]

Endangered and Threatened Wildlife and Plants; Recovery Plan for the Behren's Silverspot Butterfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the final recovery plan for the Behren's silverspot butterfly. The recovery plan includes recovery objectives and criteria, and it includes specific actions necessary to reclassify the species from endangered to threatened, and to achieve removal of the species from the Federal Lists of Endangered and Threatened Wildlife and Plants.

ADDRESSES: You may obtain copies of the final recovery plan from our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the Arcata Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521 (telephone 707–822–7201).

FOR FURTHER INFORMATION CONTACT: Bruce Bingham, Field Supervisor, at the above street address or telephone number (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

The purpose of a recovery plan is to provide a framework for the recovery of species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species may be warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

Section 4(f) of the Act requires us to provide an opportunity for public review and comment prior to finalization of recovery plans, including revisions to such plans. We made the draft recovery plan for Behren's silverspot butterfly available for public comment from January 20, 2004, through March 22, 2004 (69 FR 2725). We did not receive any comments during the public comment period for the draft recovery plan.

Recovery Plan for Behren's Silverspot Butterfly (*Speyeria zerene behrensii*)

Species' History

We listed Behren's silverspot butterfly throughout its entire range on December 5, 1997 (62 FR 64306). The species is endemic to the coastal prairie in Mendocino and Sonoma Counties, California. The current known range of the Behren's silverspot butterfly is limited to a small number of sites located from the Point Arena-Manchester State Park area south to the Salt Point area. The best available information on the life history of the Behren's silverspot butterfly comes from studies of a closely related coastal subspecies, the Oregon silverspot butterfly. Those studies found that females lay their eggs in the debris and dried stems of the larval food plant, the early blue violet (*Viola adunca*). The early blue violet is a small, native, perennial herb with pale to deep violet flowers. This violet typically blooms in late spring to early summer and dies back to the perennial rhizome during winter. Early blue violets occur widely in western North America; within the Behren's silverspot butterfly's range, they are associated with coastal grasslands.

Upon hatching, the caterpillars (larvae) wander a short distance and spin a silk pad upon which they pass the fall and winter in diapause (dormancy). The larvae are dark-colored with many branching, sharp spines on their backs. Upon ending diapause in the spring, the larvae immediately seek out the violet food plant. During the spring and early summer they pass through five instars (stages of development) before forming a pupa within a chamber of leaves that they draw together with silk. The adult butterflies emerge in about two weeks and live for approximately three weeks, during which time they feed on nectar and reproduce. Depending upon environmental conditions, the flight period ranges from about July through August or early September.

Behren's silverspot butterfly flight behavior is moderately erratic and swift in windy places, 0.3 to 1.8 meters (2 to 6 feet) above ground surface. Flights usually occur by late morning when temperatures are above about 60 degrees Fahrenheit. Adults may feed on nectar for as long as 5 minutes, returning to the same plant repeatedly. Butterflies may rest on bare ground, in grasses, or on ferns (bracken) and other foliage.

Adult Behren's silverspot butterflies feed on nectar, which is their only food source, besides internal reserves present when they emerge from the pupae. Observations of nectar feeding are few, but based on observations of this and closely related silverspot subspecies, plants in the sunflower family (Asteraceae) dominate as nectar sources, including thistles (*Cirsium* spp); gumplant (*Grindelia stricta*); goldenrods (*Solidago* spp.); tansy ragwort (*Senecio jacobaea*), California aster (*Aster chilensis*), pearly everlasting (*Anaphalis margaritacea*), seaside daisy (*Erigeron glaucus*), and yarrow (*Achillea millefolium*). Reported nectar species from other plant families include yellow sand verbena (*Abronia latifolia*), sea-pink (*Armeria maritima*), and western pennyroyal (*Monardella undulata*).

Recovery Plan Goals

The ultimate goal of this recovery plan is to recover Behren's silverspot butterfly so that it can be delisted. To meet the recovery goal, the following objectives have been identified:

1. Secure self-sustaining wild metapopulations throughout the historic range of the subspecies.
2. Determine metapopulation and range-wide population numbers and monitor them to determine long-term trends.
3. Reduce and eliminate threats, to the extent possible.
4. Protect, conserve, and restore healthy butterfly ecosystems and their function.

As Behren's silverspot butterfly meets reclassification and recovery criteria, we will review its status and consider it for removal from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Authority

We developed our recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2016–07389 Filed 3–31–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Renewal of Agency Information Collection for Energy Resource Development Program Grants

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for grants under the Office of Indian Energy and Economic Development Office's Energy and Mineral Development Program authorized by OMB Control Number 1076–0174. This information collection expires June 30, 2016.

DATES: Submit comments on or before May 31, 2016.

ADDRESSES: You may submit comments on the information collection to Rebecca Naragon, U.S. Department of the Interior, Office of Indian Energy and Economic Development, 1951 Constitution Avenue NW., MS–16–SIB, Washington, DC 20245; email: *Rebecca.Naragon@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Rebecca Naragon, (202) 208–4401.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Energy Policy Act of 2005, 25 U.S.C. 3503 authorizes the Secretary of the Interior to provide grants to Indian Tribes as defined in 25 U.S.C. 3501(4)(A) and (B). The Office of Indian Energy and Economic Development (IEED) administers and manages the energy resource development grant program under the Energy and Minerals Development Program (EMDP).

Congress may appropriate funds to EMDP on a year-to-year basis. When funding is available, IEED may solicit proposals for energy and mineral resource development projects from Indian Tribes for use on Indian lands as defined in 25 U.S.C. 3501. The projects may be in the areas of exploration, assessment, development, feasibility, or market studies. Indian Tribes that would like to apply for an EMDP grant must submit an application that includes certain information, and must assist IEED by providing information in support of any National Environmental Policy Act (NEPA) analyses.

II. Request for Comments

The Bureau of Indian Affairs (BIA) requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0174.

Title: Energy and Mineral Development Program (EMDP) Grant Solicitation.

Brief Description of Collection: Indian Tribes that would like to apply for an EMDP grant must submit an application that includes certain information. A complete application must contain a current, signed Tribal resolution that provides sufficient information to authorize the project and comply with the terms of the grant; a proposal describing the planned activities and deliverable products; and a detailed budget estimate. The IEED requires this information to ensure that it provides funding only to those projects that meet the goals of the EMDP and purposes for which Congress provides the appropriation. Upon acceptance of an application, a Tribe must then submit one to two page quarterly progress reports summarizing events, accomplishments, problems and/or results in executing the project.

Type of Review: Extension without change of currently approved collection.

Respondents: Federally recognized Indian Tribes with Indian land.

Number of Respondents: 55 applicants per year; approximately 25 project participants each year.

Estimated Time per Response: 40 hours per application; 1.5 hours per progress report.

Frequency of Response: Once per year for applications; 4 times per year for progress reports.

Obligation to Respond: Response required to obtain a benefit.

Estimated Total Annual Hour Burden: 2,308 hours (2,200 for applications and 108 for progress reports).

Estimated Total Annual Cost: $0.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2016–07441 Filed 3–31–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X LLUT980300 L10100000.XZ0000 24–1A]

Notice of Utah Resource Advisory Council/Recreation Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC)/Recreation Resource Advisory Council (RecRAC) will meet as indicated below.

DATES: The BLM-Utah RAC/RecRAC will meet May 5, 2016, from 8:00 a.m.–3:45 p.m.

ADDRESSES: The RAC/RecRAC will meet at the BLM-Utah State Office, Monument Conference Room (5th Floor), 440 West 200 South, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Lola Bird, Public Affairs Specialist (RAC Coordinator), Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4033; or *lbird@blm.gov*.

SUPPLEMENTARY INFORMATION: Planned agenda topics include the introduction of new members; election of new officers; an overview of BLM-Utah issues; updates on the effort to revise the BLM's planning regulations (Planning 2.0); implementation of the Greater Sage-Grouse land use plan; updates on the St. George Field Office resource management planning process (including the Red Cliffs and Beaver Dam National Conservation Areas); and, updates on the Respect and Protect Anti-Looting Campaign. The RecRAC will be briefed on the BLM's Connecting with Utah Communities Strategy and the Federal Lands Recreation Enhancement Act. The BLM-Henry Mountain Field Station will brief the RecRAC on a recreation fee pilot project that was approved by the RecRAC in November 2014.

A half-hour public comment period will take place from 12:30–1:30 p.m. The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

Authority: 43 CFR 1784.4–1.

Jenna Whitlock,

Acting State Director.

[FR Doc. 2016–07383 Filed 3–31–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORC03000.L63320000.DD0000.16XL11 16AF.HAG16–0044]

Interim Final Supplementary Rules for Public Lands at Bastendorff Beach and the Associated Headlands in Coos County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) Oregon/Washington State Director hereby establishes interim final supplementary rules limiting the duration of camping at Bastendorff Beach and the associated headlands

within the Umpqua Field Office, Coos Bay District, Coos County, Oregon. The rules are needed in order to protect public health and safety and the area's natural resources.

DATES: The interim final supplementary rules are effective April 1, 2016. You may submit comments to the BLM at one of the addresses below on or before May 31, 2016. The BLM will not necessarily consider any comments received after that date in reaching decisions on the final supplementary rules.

ADDRESSES: Bureau of Land Management, Attention: Heather Partipilo, BLM Umpqua Field Office, 1300 Airport Lane, North Bend, OR 97459, or email: *BLM_OR_CB_Mail@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Heather Partipilo, Umpqua Field Office Planning and Environmental Coordinator, at 541–756–0100 or by email at *BLM_OR_CB_Mail@blm.gov,* Attention: Heather Partipilo. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question with the above individual. The FIRS is available 24 hours a day, seven days a week. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM is establishing these interim final supplementary rules under the authority of 43 Code of Federal Regulations (CFR) 8365.1–6, which allows state directors to establish supplementary rules for the protection of persons, property, and the public lands and resources. This provision allows the BLM to issue rules of less than national effect without codifying the rules in the CFR. These interim final supplementary rules apply to public lands managed by the Umpqua Field Office.

Maps of the management areas and boundaries can be obtained by contacting the Umpqua Field Office (see **ADDRESSES**). The Coos Bay District Office will post this notice on its Web site at: ***http://www.blm.gov/or/districts/*** *coosbay/index.php.* The final supplementary rules will be available for inspection in the Umpqua Field Office.

I. Public Comment Procedures

Please submit your comments on issues related to the rules, in writing, in accordance with the **ADDRESSES** section above. Comments on the rules should be specific, should be confined to issues pertinent to the rules, and should explain the reason for any recommended change.

The BLM is not obligated to consider, or include in the Administrative Record for the final supplementary rules, comments delivered to an address other than those listed above (see **ADDRESSES**) or comments that the BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline.

The BLM will make your comments, including your name and address, available for public review at the Coos Bay District address listed in **ADDRESSES** above during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Discussion of Interim Final Supplementary Rules

On August 18, 2005, the BLM Oregon/Washington State Office established supplementary rules for all public lands in the states of Oregon and Washington (70 FR 48584). The interim final supplementary rules that are established today revise the first two rules, pertaining to camping and occupancy, only with regard to public lands at Bastendorff Beach and the associated headlands within the Umpqua Field Office, Coos Bay District, Oregon.

The 2005 camping and occupancy rule prohibits camping longer than 14 days in a 28 day period on public land in Oregon or Washington. The rule also requires that campers move at least 25 air miles from a previously occupied site after 14 days of camping.

The interim final supplementary rule that is established today revises the 2005 rule by limiting camping to a single stay of up to 24 hours in any 14-day period within the public lands at Bastendorff Beach and the associated headlands, unless otherwise authorized, and requiring campers to move at least 25 air miles from a previously occupied site after 24 hours of camping.

The BLM will continue to enforce all of the other 2005 supplementary rules, including the prohibition against leaving personal property unattended in a day use area, campground, designated recreation area or on public lands for more than 24 hours. This new camping limit will help the BLM minimize damage to natural resources, maintain public access for recreational uses, and reduce threats to public health, safety, and property.

This action is necessary because an increasing number of users of Bastendorff Beach have established long-term residency under the pretext of camping. Public concern about the effects of this unauthorized occupancy requires the BLM to develop stronger regulations to address this issue. The proliferation of residential camping interferes with legitimate recreational use of public lands; creates sanitation and other health and safety concerns; and damages natural resources because of the attendant increase of open raw sewage, trash dumping, abandoned trailers and vehicles, clearing and trampling of vegetation, brushfires caused by unattended campfires, aggressive panhandling, vehicle burglary, assault, and other law enforcement incidents.

The interim final supplementary rules are consistent with:

- The Bastendorff Beach Cooperative Management Plan approved by the BLM, Oregon Parks and Recreation Department, and Coos County Commissioners (July 20, 2011); and
- The Bastendorff Beach Cooperative Management Plan Environmental Assessment (DOI–BLM–OR–C030–2011–0006–EA) and the Finding Of No Significant Impact (FONSI) (February 27, 2012); and the Decision Record (March 1, 2012).

The rules apply to the public lands at Bastendorff Beach and the associated headlands within sections 2 and 3 of Township 26 South, Range 14 West of the Willamette Meridian. The Environmental Assessment (EA) analyzed specific management actions that would restrict camping and define route designation. One of the principal public and agency concerns raised during the plan scoping and comment period was long-term, residential camping and how the effects of this activity were detracting from the quality and safety of recreation at this popular beach near the community of Charleston, Oregon.

Since 2011, ongoing efforts to contain the problems at Bastendorff Beach have proved insufficient, and the threats to public health and safety have intensified. The BLM has determined that these rules are necessary to preserve the health and safety of visitors and neighboring residents, to maintain public access to recreation, and to limit damage to the environment. This notice, with detailed maps, will be available at the Coos Bay District Office.

In accordance with section 533(b)(B) of the Administrative Procedure Act

(APA) (5 U.S.C. 553(b)(B)), the BLM finds good cause that prior notice and public procedure are contrary to the public interest. The urgency and magnitude of the need to reduce the risks to public safety and health associated with long-term, residential camping warrants expedited action with regard to Bastendorff Beach.

Good cause under section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)), also exists for making these rules effective April 1, 2016 because the Coos County Commissioners, the Coos County Sheriff's Office, Oregon Parks and Recreation Department, adjacent land owners, and concerned citizens are asking the BLM to take immediate and assertive law enforcement action to curtail illegal activities on public lands at Bastendorff Beach. In addition, there is good cause to forgo prior notice and comment regarding the rules in order to provide relief to recreational visitors and nearby residents from the immediate and ongoing health and safety risks identified in the discussion.

The BLM invites public comment on these interim final supplementary rules until May 31, 2016. If we receive any substantive comments in response to this notice, we will determine whether or not to modify these interim final supplementary rules. Regardless of whether or not we receive substantive comments, we will publish a notice establishing final supplementary rules.

III. Procedural Matters

Executive Order 12866 and 13563, Regulatory Planning and Review

These supplementary rules are not significant regulatory actions and are not subject to review by the Office of Management and Budget under Executive Order 12866. The supplementary rules will not have an effect of $100 million or more on the economy. These rules establish a duration for camping visits and will not adversely affect, in a material way, the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor do the rules raise novel legal or policy issues. These supplementary rules enable BLM law enforcement personnel to efficiently track occupancy and enforce regulations pertaining to unlawful occupancy in a manner consistent with current Oregon State and county laws, where appropriate on public lands.

Clarity of the Supplemental Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make the interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in these interim final supplementary rules clearly stated?

(2) Do these interim final supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of these interim final supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would these interim final supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of these interim final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the interim final supplementary rules? How could this description be more helpful in making the interim final supplementary rules easier to understand?

Please send any comments you have on the clarity of the interim final supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

The BLM has prepared an EA and has found that these interim final supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). These interim final supplementary rules will enable BLM law enforcement personnel to cite persons for unlawful camping and use of public land for residential purposes. The BLM completed an EA to analyze the change in the camping limit in the planning area. The Decision Record for this EA was signed on March 1, 2012. The BLM has placed the EA and the FONSI on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents (*http://www.blm.gov/or/districts/coosbay/plans/plans-details.php?id=2003*) and requests that anyone wishing to submit comments do so in accordance with the Public Comment Procedures section, above.

Regulatory Flexibility Act (RFA)

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601, *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These interim final supplementary rules do not pertain specifically to commercial or governmental entities of any size, but contain rules to limit the duration of overnight camping on public lands in the Bastendorff Beach area in the Coos Bay District. Therefore, the BLM has determined, under the RFA, that these interim final supplementary rules do not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These interim final supplementary rules do not constitute "major rules" as defined at 5 U.S.C. 804(2). These interim final supplementary rules only establish a 24-hour limitation on overnight camping over a 14-day period at Bastendorff Beach and the associated headlands, and require campers to move at least 25 air miles from a previously occupied site after 24 hours of camping. The limitation is necessary to protect the public lands and facilities and those, including small business concessionaires and outfitters, who use them. These interim final supplementary rules will have no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

These interim final supplementary rules do not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year, nor do these interim final supplementary rules have a significant or unique effect on state, local, or tribal governments or the private sector. The interim final supplementary rules do not require anything of state, local, or tribal governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These interim final supplementary rules do not represent a Government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not address property rights in any form and do not cause the impairment of anyone's property rights. Therefore, the Department of the Interior has determined that these interim final supplementary rules do not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

These interim final supplementary rules will not have a substantial, direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. These interim final supplementary rules apply in only one state, Oregon, and do not address jurisdictional issues involving the Oregon State government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these interim final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Oregon/Washington State Office of the BLM has determined that these interim final supplementary rules do not unduly burden the judicial system and that the rule meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that these interim final supplementary rules do not include policies that have tribal implications. Since these interim final supplementary rules do not change BLM policy and do not involve Indian reservation lands or resources, we have determined that the government-to-government relationships remain unaffected. These interim final supplementary rules only prohibit camping longer than 24 hours in any 14-day period.

Executive Order 13352, Facilitation of Cooperative Conservation

Under Executive Order 13352, the Oregon/Washington State Office of the BLM has determined that these interim final supplementary rules will not impede the facilitation of cooperative conservation. These interim final supplementary rules will take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodate local participation in the Federal decision-making process; and provide that the programs, projects, and activities are consistent with protecting public health and safety.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These interim final supplementary rules do not comprise a significant energy action. These interim final supplementary rules will not have an adverse effect on energy supplies, production, or consumption. The rules only address unauthorized occupancy on public lands and have no connection with energy policy.

Paperwork Reduction Act

These interim final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

Interim Final Supplementary Rules

For the reasons stated in the preamble, and under the authority of 43 CFR 8365.1–6, 43 U.S.C. 1740, and 43 U.S.C. 315a, the State Director establishes interim final supplementary rules for public lands managed by the BLM in Coos County, Oregon, subject to the Coos Bay District Resource Management Plan, to read as follows:

Prohibited Acts

Unless otherwise authorized, the Bureau of Land Management will enforce the following rules on public lands at Bastendorff Beach and the associated headlands within the Umpqua Field Office, Coos Bay District, Oregon:

Camping and Occupancy

1. You must not camp longer than a single stay of up to 24 hours in a 14-day period on public land.
2. After a single stay of up to 24 hours, you must move at least 25 air miles away from the previously occupied site.

Exemptions

The following persons are exempt from these rules: Any Federal, state, or local officer or employee acting within the scope of his/her duties; members of any organized rescue or firefighting force in performance of an official duty; and any person authorized, in writing, by the BLM.

Enforcement

Any person who violates these interim final supplementary rules may be tried before a United States Magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 U.S.C. 8365.1–7, state or local officials may also impose penalties for violations of Oregon law.

Jamie E. Connell,

Oregon/Washington Acting State Director, Bureau of Land Management.

[FR Doc. 2016–07382 Filed 3–31–16; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO910000–L10100000.PH0000–16x]

Notice of Joint Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Colorado's Northwest Resource Advisory Council (RAC), Southwest RAC and Front Range RACs will meet as indicated below.

DATES: The Northwest, Southwest and Front Range RACs have scheduled a joint meeting for April 25, 26 and 27, 2016. On April 25, the meeting will begin at 12 p.m. and adjourn at 5 p.m.; on April 26, the meeting will begin at 8 a.m. and adjourn at 5 p.m.; on April 27, the meeting will begin at 8 a.m. and adjourn at 12 p.m. On April 27, each RAC will hold individual RAC meetings from 8 a.m. to 12 p.m., with time for public comments from 8 to 8:30 a.m.

ADDRESSES: The joint Colorado RAC meeting will be held at the Hotel Colorado in Glenwood Springs, 526 Pine St., Glenwood Springs, CO 81601.

FOR FURTHER INFORMATION CONTACT: Courtney Whiteman, Public Affairs Specialist; BLM Colorado State Office, 2850 Youngfield St., Lakewood, CO 80215; telephone (303) 239–3668. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Colorado RACs advise the Secretary of the Interior, through the BLM, on a variety of public land issues in Colorado.

Topics of discussion during the RAC meeting may include recreation, land use planning, energy and minerals management, recreation, sage-grouse habitat management and other issues as appropriate. This meeting is open to the public. The public may present written comments to the RACs. There will also be time, as identified above, allocated for hearing public comments. Depending on the number of people who wish to comment during the public comment period, individual comments may be limited.

Steven Hall,

Acting BLM Colorado State Director.

[FR Doc. 2016–07385 Filed 3–31–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–WM–PSB–20543; PPWOWMADH2, PPMPSAS1Y.YH0000 (166)]

Proposed Information Collection; National Park Service Background Initiation Request Form

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comments on or before May 31, 2016.

ADDRESSES: Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive (Room 2C114, Mail Stop 242), Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please include "1024—New Background Initiation Request Forms" in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Shean Rheams, National Park Service, 1201 Eye Street NW., Washington, DC 20005 (mail); or *shean_rheames@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

The NPS, as delegated by the U.S. Office of Personnel Management (OPM), is authorized to request information to determine suitability of applicants for Federal employment and proposed non-Federal personnel working under contractor and/or agreement who require access to NPS property and/or receive a DOIAccess (personal identity verification (PIV)) badge under Executive Orders 10450 and 10577; sections 3301, 3302, and 9101 of Title 5, United States Code (U.S.C.); and parts 2, 5, 731, and 736 of Title 5, Code of Federal Regulations (CFR), and Federal information processing standards. Section 1104 of Title 5 allows OPM to delegate personnel management functions to other Federal agencies.

In line with new regulations mandated by the OPM and the Department of the Interior (DOI), the NPS Personnel Security Branch is utilizing the Electronic Questionnaires for Investigations Processing (E–QIP) System. As a result, electronic submission of the Standard Form 85, for suitability background investigations (NACI), or the Standard Form 85P, for Public Trust, is now required. The DOI and NPS requires all applicants for Federal employment and non-Federal personnel (contractors, partners, etc.) requiring access to NPS property and/or receive a DOIAccess PIV badge to be processed for a suitability background investigation, in accordance with Executive Order 10450 and the Homeland Security Presidential Directive (HSPD–12).

The National Park Service will utilize Form 10–955, "Background Initiation Request" to create E–QIP accounts necessary to initiate background investigations for all individuals requiring access to NPS property and/or receive a DOIAccess (personal identity verification (PIV)) badge. The OPM and DOI programs initiating background investigations have published notices in the **Federal Register** describing the systems of records (SORN) in which the records will be maintained.

The information collected via NPS Form 10–955 includes detailed information for each proposed candidate requiring a background clearance, to include:

- Full legal name;
- Social Security Number;
- Date and Place of Birth;
- Country of Citizenship;
- Contact Phone Number;
- Email Address;
- Home Address;
- Whether proposed candidate has ever been investigated by another Federal agency; and
- If they were investigated by another Federal agency, they must provide the name of that agency and the date of the investigation.

Additional information required on Form 10–956 for proposed contractors, partners, and other non-Federal candidates includes:

- Name of Proposed Candidate's Company;
- Contract/Agreement Number; and
- Contract/Agreement Periods of Performance.

II. Data

OMB Control Number: 1024—New.

Title: National Park Service Background Initiation Request Form.

Service Form Number(s): NPS Form 10–955, "Background Initiation Request".

Type of Request: New.

Description of Respondents: Candidates for Federal employment, as well as contractors, partners, and other non-Federal candidates proposed to work for the NPS under a Federal contract or agreement who require access to NPS property and/or a DOIAccess (PIV) badge.

Respondent's Obligation: Mandatory.

Frequency of Collection: On occasion.

Estimated Number of Responses: 1,200.

Estimated Completion Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 60.

Estimated Annual Nonhour Burden Cost: None.

III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;

- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: March 28, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–07387 Filed 3–31–16; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–287 (Second Review)]

Raw In-Shell Pistachios From Iran; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty order on raw in-shell pistachios from Iran would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 2, 2016. Comments on the adequacy of responses may be filed with the Commission by June 14, 2016.

DATES: *Effective Date:* April 1, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On July 17, 1986, the Department of Commerce issued an antidumping duty order on imports of raw in-shell pistachios from Iran (51 FR 25922). Following the five-year reviews by Commerce and the Commission, effective January 3, 2006, Commerce issued a continuation of the antidumping duty order on imports of raw in-shell pistachios from Iran (71 FR 94–01). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.[2] Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Iran.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its full first five-year review determination, the Commission defined the *Domestic Like Product* as raw in-shell pistachio nuts that have been harvested, hulled, dried to a moisture content of 4–6 percent, and graded. These included all shapes of nuts, all three U.S. grades (U.S. Fancy, U.S. No. 1 and U.S. No. 2) and all four size categories (very large, large, medium, and small).

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full first five-year review determination, the Commission defined the *Domestic Industry* as growers of pistachio nuts and processors of pistachio nuts from hulling through grading.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–354, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

[2] On July 1, 2010, prior to Commerce's initiation of the second review scheduled for December 2010, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) was signed into law. Among its provisions is a general prohibition on imports from Iran (Sec. 103) that became effective on September 29, 2010. This prohibition on imports led Commerce, pursuant to 19 U.S.C. 1675(c)(7), to toll the initiation of the second review of this order. Commerce announced that it would not initiate the second review until two months after the lifting of the prohibition (75 FR 67081, November 1, 2010). On January 21, 2016, the Iranian Transactions and Sanctions Regulations were amended to permit the importation of pistachios from Iran (81 FR 3330). Commerce subsequently included the second review of this order in its list of reviews scheduled for initiation in April 2016 (81 FR 10577, March 1, 2016).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is June 14, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

Information to be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after crop year (September 1–August 31) 2004/05.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during crop year (September 1–August 31) 2009/10 and crop year 2014/15, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during crop year (September 1–August 31) 2009/10 and crop year 2014/15 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during crop year (September 1–August 31) 2009/10 and crop year 2014/15 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after crop year (September 1–August 31) 2004/05, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 28, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–07254 Filed 3–31–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–475 and 731–TA–1177 (Review)]

Certain Aluminum Extrusions From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping and countervailing duty orders on certain aluminum extrusions other than finished heat sinks from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 2, 2016. Comments on the adequacy of responses may be filed with the Commission by June 14, 2016.

DATES: *Effective Date:* April 1, 2016.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E

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[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 16–5–353, expiration date June 30, 2017. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On May 26, 2011, the Department of Commerce issued antidumping and countervailing duty orders on imports of certain aluminum extrusions other than finished heat sinks from China (76 FR 30650–30655). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original *affirmative* determinations, the Commission found one *Domestic Like Product:* All aluminum extrusions other than finished heat sinks corresponding to Commerce's scope of the orders.[2] Certain Commissioners defined the *Domestic Like Product* differently.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original *affirmative* determinations, the Commission found one *Domestic Industry* consisting of all domestic producers of certain aluminum extrusions other than finished heat sinks, except for one producer which the Commission excluded as a related party. Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is May 26, 2011.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 2, 2016. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in

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[2] The Commission found two separate *Domestic Like Products* in the original investigations: (1) Finished heat sinks and (2) all other aluminum extrusions corresponding to Commerce's scope of the investigations. However, the Commission determined that an industry in the United States was not materially injured or threatened with material injury, or that the establishment of an industry in the United States was not materially retarded, by reason of imports of finished heat sinks from China. Therefore, the antidumping and countervailing duty orders pertain to aluminum extrusions other than finished heat sinks corresponding to Commerce's scope of the orders.

Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 14, 2016. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2015, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015(report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2015 (report quantity data in short tons and value data in U.S. dollars, landed and

duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.*, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 28, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–07257 Filed 3–31–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–557 and 731–TA–1312 (Preliminary)]

Stainless Steel Sheet and Strip From China

Determinations

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of stainless steel sheet and strip from China, provided for in subheadings 7219.13.00, 7219.14.00, 7219.23.00, 7219.24.00, 7219.32.00, 7219.33.00, 7219.34.00, 7219.35.00, 7219.90.00, 7220.12.10, 7220.12.50, 7220.20.10, 7220.20.60, 7220.20.70, 7220.20.90, and 7220.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value ("LTFV") and are allegedly subsidized by the government of China.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce ("Commerce") of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On February 12, 2016, AK Steel Corp., West Chester, Ohio; Allegheny Ludlum, LLC d/b/a ATI Flat Rolled Products, Pittsburgh, Pennsylvania; North American Stainless, Inc., Ghent, Kentucky; and Outokumpu Stainless USA, LLC, Bannockburn, Illinois filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV and subsidized imports of stainless steel sheet and strip from China. Accordingly, effective February 12, 2016, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–557 and antidumping duty investigation No. 731–TA–1312 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 19, 2016 (81 FR 8544). The conference was held in Washington, DC, on March 4, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on March 28, 2016. The views of the Commission are contained in USITC Publication 4603 (April 2016), entitled *Stainless Steel Sheet and Strip from China: Investigation Nos. 701–TA–557 and 731–TA–1312 (Preliminary).*

By order of the Commission.

Issued: March 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–07360 Filed 3–31–16; 8:45 am]

BILLING CODE 7020–02–P

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1315 (Preliminary)]

Ferrovanadium From Korea; Institution of Antidumping Duty Investigation and Scheduling of Preliminary Phase Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigation and commencement of preliminary phase antidumping duty investigation No. 731–TA–1315 (Preliminary) pursuant to the Tariff Act of 1930 ("the Act") to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of ferrovanadium from Korea, provided for in subheading 7202.92.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation, the Commission must reach a preliminary determination in antidumping duty investigations in 45 days, or in this case by May 12, 2016. The Commission's views must be transmitted to Commerce within five business days thereafter, or by May 19, 2016.

DATES: *Effective Date:* March 28, 2016.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), in response to a petition filed on March 28, 2016, by the Vanadium Producers and Reclaimers Association and its members: AMG Vanadium, LLC, Cambridge, Ohio; Bear Metallurgical Company, Butler, Pennsylvania; Gulf Chemical & Metallurgical Corporation, Freeport, Texas; and Evraz Stratcor, Inc., Hot Springs, Arkansas.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register.** Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with this investigation for 9:30 a.m. on Monday, April 18, 2016, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the conference should be emailed to *William.Bishop@usitc.gov* and *Sharon.Bellamy@usitc.gov* (do not file on EDIS) on or before April 14, 2016. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before April 21, 2016, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 29, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–07416 Filed 3–31–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that, on February 10, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), ASTM International ("ASTM") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ASTM has provided an updated list of current, ongoing ASTM standards activities originating between September 2015 and February 2016 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 2004 (69 FR 65226).

The last notification was filed with the Department on December 11, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 6, 2016 (81 FR 513).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–07346 Filed 3–31–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on March 8, 2016, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Network Centric Operations Industry Consortium, Inc. ("NCOIC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Compusult Limited, Mount Pearl, Newfoundland and Labrador, CANADA; and beamSmart, Vienna, VA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCOIC intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, NCOIC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on December 21, 2015. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 22, 2016 (81 FR 3821).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–07347 Filed 3–31–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Underground Coal Mine Fire Protection

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Underground Coal Mine Fire Protection," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 2, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201509-1219-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Underground Coal Mine Fire Protection information collection requirements codified in regulations 30 CFR 75.1502 that requires an underground coal mine operator to submit for MSHA approval a plan for the instruction of miners in firefighting and evacuation procedures to be followed in the event of an emergency. In addition, various sections of part 75 require fire drills to be conducted quarterly, equipment to be tested, and a record to be kept of the drills and testing results. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a) and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0054.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 2, 2015 (80 FR 67427).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0054. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Underground Coal Mine Fire Protection.

OMB Control Number: 1219–0054.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 237.

Total Estimated Number of Responses: 144,427.

Total Estimated Annual Time Burden: 24,916 hours.

Total Estimated Annual Other Costs Burden: $332.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 25, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–07338 Filed 3–31–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; International Training Application

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, "International Training Application," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 2, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201510-1220-003* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–BLS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the International Training Application information collection. The BLS is one of the largest labor statistics organizations in the world and has provided international training in labor market information and price indexes since 1945. Each year, the BLS conducts training programs of 1 to 2 weeks duration at its training facilities in Washington, DC Potential participants, their employers, or sponsors complete the Training Application in order to provide information required to determine suitability for the BLS international training and to enroll those deemed suitable. The BLS Authorizing Statue and the Foreign Assistance Act of 1961 authorize this information collection. *See* 29 U.S.C 1, 2, 9; 22 U.S.C. 2357.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1220–0179.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 12, 2015 (80 FR 69983).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1220–0179. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–BLS.

Title of Collection: International Training Application.

OMB Control Number: 1220–0179.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 100.

Total Estimated Number of Responses: 100.

Total Estimated Annual Time Burden: 34 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 28, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–07303 Filed 3–31–16; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; OFCCP Recordkeeping and Reporting Requirements—Supply and Service

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Federal Contract Compliance Programs (OFCCP) sponsored information collection request (ICR) revision titled, "OFCCP Recordkeeping and Reporting Requirements—Supply and Service," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before May 2, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201602-1250-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OFCCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the OFCCP Recordkeeping and Reporting Requirements—Supply and Service information collection, commonly referred to as the Scheduling Letter, which is used to schedule Federal contractors and subcontractors for compliance evaluations in accordance with Executive Order 11246 section 206, as amended; Rehabilitation Act of 1973 section 503, as amended; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 section 402, as amended. These mandates prohibit Federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or protected veteran's status. They also prohibit these employers from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers. This information collection has been classified as a revision, because of minor clarifying edits to the Scheduling Letter and associated Itemized Listing to ensure contractors understand the information being requested and to strengthen the agency's assurances of confidentiality for the information provided. Executive Order 11246 section 201, Rehabilitation Act of 1973 section 503, and Vietnam Era Veterans' Readjustment Assistance Act section 402 authorize this information collection. *See* E.O. 11246 section 201, 29 U.S.C. 793, and 38 U.S.C. 4212.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1250–0003. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 29, 2015 (80 FR 66572).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1250–0003. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OFCCP.

Title of Collection: OFCCP Recordkeeping and Reporting Requirements—Supply and Service.

OMB Control Number: 1250–0003.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions.

Total Estimated Number of Respondents: 104,545.

Total Estimated Number of Responses: 104,545.

Total Estimated Annual Time Burden: 9,559,739 hours.

Total Estimated Annual Other Costs Burden: $140,263.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 28, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–07302 Filed 3–31–16; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Number: OSHA–2016–0006]

Whistleblower Protection Advisory Committee

AGENCY: Occupational Safety and Health Administration (OSHA), DOL.

ACTION: Request for nominations to serve on the Whistleblower Protection Advisory Committee.

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for membership on the Whistleblower Protection Advisory Committee (WPAC).

DATES: Nominations for WPAC must be submitted (postmarked, sent, transmitted, or received) by May 31, 2016.

ADDRESSES: You may submit nominations for WPAC, identified by the OSHA Docket No. OSHA–2016–0006, by any of the following methods:

Electronically: Nominations, including attachments, may be submitted electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: If your nomination and supporting materials, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: Submit your nominations and supporting materials to the OSHA Docket Office, Docket No. OSHA–2016–0006, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All nominations and supporting materials for WPAC must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2016–0006). Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations see the "Public Participation—Submission of Nominations and Access to Docket" heading in the **SUPPLEMENTARY INFORMATION** section below.

Submissions in response to this **Federal Register** notice, including personal information provided, are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and dates of birth.

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through that Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT: Anthony Rosa, OSHA, Directorate of Whistleblower Protection Programs, U.S. Department of Labor, Room N–4618, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199; email address *osha.dwpp@dol.gov.*

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Labor for Occupational Safety and Health invites interested individuals to submit nominations for membership on WPAC.

Background. The WPAC advises the Secretary of Labor (the Secretary) and the Assistant Secretary of Labor for Occupational Safety and Health (the Assistant Secretary) on ways to improve the fairness, efficiency, and transparency of OSHA's whistleblower investigations. WPAC is a continuing advisory body and operates in compliance with the Federal Advisory Committee Act (5 U.S.C. App. 2) and its implementing regulations (*see* "Authority and Signature" section).

WPAC membership. WPAC is comprised of 12 members, whom the Secretary appoints to staggered terms, not to exceed 2 years. OSHA is seeking to fill six positions on WPAC that will become vacant on December 1, 2016. The composition of WPAC and categories of new members to be appointed to new two-year terms are as follows:

- Two management representatives who are or represent employers or employer associations in industries covered by one or more of the whistleblower laws enforced by OSHA;
- Two labor representatives who are or represent workers or worker advocacy organizations in industries covered by one or more of the whistleblower laws enforced by OSHA; and
- Two public representatives from a college, university, non-partisan think tank, or other entity who have extensive knowledge and expertise on whistleblower statutes and issues.

If a vacancy occurs before a term expires, the Secretary may appoint a new member who represents the same interest as the predecessor to serve for the remainder of the unexpired term. The committee meets at least two times a year.

Nomination requirements. Any individual or organization may nominate one or more qualified persons for membership. If an individual or organization nominates more than one person, each person must be named. Submissions of nominations must include the following information for each nominee:

1. The nominee's name, contact information and current occupation or position (required);

2. The nominee's resume or curriculum vitae, including prior membership on WPAC and other relevant organizations, associations and committees (required);

3. Category of membership (management, labor, state plan, or academic/extensive whistleblower knowledge) the nominee is qualified to represent (required);

4. A summary of the nominee's background, experience and qualifications that address the nominee's suitability to serve on WPAC (required);

5. Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience and expertise in whistleblower protections (optional); and

6. A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in WPAC meetings, and has no apparent conflicts of interest that would preclude membership on WPAC (required).

Nominations that do not contain all required information will not be considered.

Membership selection. WPAC members will be selected on the basis of their experience, knowledge, and competence in the field of whistleblower protection. The information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary in appointing members to serve on WPAC. In selecting WPAC members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. The Department encourages the nomination of individuals with diverse viewpoints, perspectives and experiences to the WPAC, including individuals with disabilities and individuals of all races, genders, ages, and sexual orientations.

Before candidates are appointed, the U.S. Department of Labor (Department) conducts a basic background check using publically available, Internet-based sources.

Instructions for submitting nominations. Interested individuals may submit nominations and supplemental materials using one of the methods listed in the **ADDRESSES** section. All nominations, attachments and other materials must identify the docket number for this **Federal Register** notice (Docket No. OSHA–2016–0006). To submit nominations through *http://www.regulations.gov,* search for the docket (OSHA–2016–0006), open the docket, click on the button that states "Comment Now", and follow the instructions. You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to submit additional materials in reference to an electronic or FAX submission, you must submit them to the OSHA Docket Office (see **ADDRESSES** section). The additional material must clearly identify your electronic or FAX submission by name and docket number (Docket No. OSHA–2016–0006) so that the materials can be attached to your submission.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

All submissions in response to this **Federal Register** notice are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information, such as Social Security numbers and birthdates. Guidance on submitting nominations and materials in response to this **Federal Register** notice is available at *http://www.regulations.gov* and from the OSHA Docket Office.

Access to docket and other materials. To read or download nominations and additional materials submitted in response to this **Federal Register** notice, go to Docket No. OSHA–2016–0006, at: *http://www.regulations.gov.* All submissions are listed in the index of that docket. However, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for information about materials not available through *http://www.regulations.gov* and for assistance in using the internet to locate submissions.

Electronic copies of this **Federal Register** notice are available at: *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also is available at the Directorate of Whistleblower Protection Program's Web page at *http://www.whistleblowers.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by 5 U.S.C. App. 2, 41 CFR part 102–3, chapter 1600 of Department of Labor Management Series 3 (Aug. 15, 2013), 77 FR 3912 (Jan. 25, 2012), and the Secretary of Labor's authority to administer the whistleblower provisions found in 29 U.S.C. 660(c), 49 U.S.C. 31105, 15 U.S.C. 2651, 46 U.S.C. 80507, 42 U.S.C. 300j–9(i), 33 U.S.C. 1367, 15 U.S.C. 2622, 42 U.S.C. 6971, 42 U.S.C. 7622, 42 U.S.C. 9610, 42 U.S.C. 5851, 49 U.S.C. 42121, 18 U.S.C. 1514A, 49 U.S.C. 60129, 49 U.S.C. 20109, 6 U.S.C. 1142, 15 U.S.C. 2087, 29 U.S.C. 218c, 12 U.S.C. 5567, 46 U.S.C. 2114, 21 U.S.C. 399d, and 49 U.S.C. 30171.

Signed at Washington, DC, on March 29, 2016.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2016–07427 Filed 3–31–16; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health Meeting

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Announcement of meeting of the Advisory Board on Toxic Substances and Worker Health (Advisory Board) for Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The Advisory Board will meet April 26–28, 2016, in Washington, DC.

Comments, requests to speak, submissions of materials for the record, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to address the Advisory Board, speaker presentations, and requests for special accommodations for the meetings by April 19, 2016.

ADDRESSES: The Advisory Board will meet in Room N–4215 A/B/C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak and submissions of materials for the record: You may submit comments, materials, and requests to speak at the Advisory Board meeting, identified by the Advisory Board name and the meeting date of April 26–28, 2016, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, "Request to Speak: Advisory Board on Toxic Substances and Worker Health").

- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW., Washington, DC 20210.

Requests for special accommodations: Please submit requests for special accommodations to attend the Advisory Board meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S–3524, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 343–5580; email *EnergyAdvisoryBoard@dol.gov.*

Instructions: Your submissions must include the Agency name (OWCP), the Advisory Board name and the meeting date of April 26—28, 2016. Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OWCP will make available publically, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Ms. Amanda McClure, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–4672; email *mcclure.amanda.c@dol.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Board meeting: The Advisory Board will meet Tuesday, April 26, 2016; Wednesday, April 27, 2016; and Thursday, April 28, 2016, in Washington, DC, from 8:00 a.m. until 6:00 p.m. each day, except ending at 3:00 p.m. on the last day. Some Advisory Board members may attend the meeting by teleconference. The teleconference number and other details for participating remotely will be posted on the Advisory Board's Web site, 72 hours prior to the commencement of the first meeting date. This information will be posted at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.* Advisory Board meetings are open to the public.

Public comment sessions: April 26, 2016, from 5:00 p.m. to 6:00 p.m.; April 27, 2016, from 5:00 p.m. to 6:00 p.m.; and April 28, 2016, from 1:00 p.m. to 1:45 p.m. Please note that the public comment sessions end at the time indicated or following the last call for comments, whichever is earlier. Members of the public who wish to provide public comments should plan to attend the public comment session (in person or remotely) at the start time listed.

The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2019.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Welcome remarks from DOL officials;
- New member orientation on FACA and ethics rules;
- Overview of the EEOICPA program;
- Discussion of the Board's authority and recommendations regarding the proposed new regulations (identified by Regulatory Information Number 1240–AA08);
- Presentations from the Department of Energy, the Advisory Board on Radiation and Worker Health, the EEOICPA Ombudsman, and the NIOSH Ombudsman;
- Discussion on the Site Exposure Matrices (SEM) of the Department of Labor;
- Discussion on medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants;
- Discussion on evidentiary requirements for claims under EEOICPA Part B related to lung disease;
- Discussion on the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency; and
- Public comments.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP posts the transcripts and minutes on the Advisory Board Web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions and Access to Public Record

Advisory Board meetings: All Advisory Board meetings are open to the public. Individuals attending Advisory Board meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance at 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification (*e.g.,* driver's license) to enter the building. For additional information about building security measures for attending Advisory Board meetings, please contact Ms. Rhoads (see **ADDRESSES** section). Information on how to participate in the meeting remotely will be posted on the Advisory Board's Web site.

Individuals requesting special accommodations to attend the Advisory Board meeting should contact Ms. Rhoads.

Submission of comments: You may submit comments using one of the methods listed in the **ADDRESSES** section. Your submission must include the Agency name (OWCP) and date for this Advisory Board meeting (April 26–28, 2016). OWCP will post your comments on the Advisory Board Web site and provide your submissions to Advisory Board members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays.

Requests to speak and speaker presentations: If you want to address the Advisory Board at the meeting you must submit a request to speak, as well as any written or electronic presentation, by April 19, 2016, using one of the methods listed in the **ADDRESSES** section. Your request may include:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The Advisory Board Chair may grant requests to address the Board as time and circumstances permit.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's Web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

FOR FURTHER INFORMATION CONTACT: You may contact Antonio Rios, Designated Federal Officer, Advisory Board on Toxic Substances and Worker Health, Office of Workers' Compensation Programs, at *rios.antonio@dol.gov,* or Carrie Rhoads, Office of Workers' Compensation Programs, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW., Suite S–3524, Washington, DC 20210, telephone (202) 343–5580. This is not a toll-free number.

Signed at Washington, DC, this 28th day of March, 2016.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2016–07348 Filed 3–31–16; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2016–025]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by May 2, 2016. Once NARA completes appraisal of the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Management Services (ACNR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No agencies may destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after a thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records or that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency), provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction), and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Farm Service Agency (DAA–0145–2015–0016, 2 items, 2 temporary items). Records related to base acre, yield updates, and agricultural risk and price loss coverage, including case files and rejected/withdrawn applications.

2. Department of Agriculture, Farm Service Agency (DAA–0145–2015–0017, 3 items, 3 temporary items). Records related to the margin protection program for dairy farmers, including case files and rejected/withdrawn applications.

3. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0036, 1 item, 1 temporary item). Records related to packing, boxing, and crating material for preservation or long term storage.

4. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0046, 1 item, 1 temporary item). Index of records related to construction and engineering projects.

5. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2015–0002, 1 item, 1 temporary item). Records related to oversight of human and animal research including proposals, board certifications, and review and approval documentation.

6. Department of Defense, Office of the Secretary of Defense (DAA–0330–2015–0010, 2 items, 2 temporary items). Master files and associated metadata of an electronic information system used to track Equal Employment Opportunity investigations and resolutions.

7. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0002, 2 items, 1 temporary item). Records related to the issuance of press releases, including background papers, news clippings, program activities, and reference materials. Proposed for permanent retention are press releases.

8. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0006, 12 items, 9 temporary items). Records related to Federal grant programs, including penalty determinations and resolutions, regulation files, briefing materials, and court case files. Proposed for permanent retention are final data reports, policy files, policy precedent final reports, and publications.

9. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0009, 2 items, 1 temporary item). Office-level delegations of authority records. Proposed for permanent retention are delegations of authority for senior management staff.

10. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0010, 6 items, 6 temporary items). Child support enforcement records including correspondence, memorandums, agreements, reports, and planning documents.

11. Department of Health and Human Services, Administration for Children and Families (DAA–0292–2016–0011, 4 items, 1 temporary item). Congressional reports related to the evaluation of tribal funding projects. Proposed for permanent retention are tribal consultation reports and paper and audio-visual records documenting Native American languages.

12. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0003, 1 item, 1 temporary item). Records related to pre-determination review of employer eligibility to file applications for individuals for certain employment-based visas.

13. Department of the Navy, Naval Nuclear Propulsion Program (DAA–0594–2015–0002, 1 item, 1 temporary item). Correspondence records related to the efficient operation of reactors and training and evaluation of personnel.

14. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2015–0005, 3 items, 3 temporary items). Records related to clinical psychology and mental hygiene including notes, tests, evaluations, and related materials in electronic health records.

15. Department of Veterans Affairs, Veterans Health Administration, (DAA–0015–2016–0002, 2 items, 2 temporary items). Records of studies to diagnose and treat sleep disorders.

16. General Services Administration, Federal Acquisition Service (DAA–0137–2015–0001, 17 items, 17 temporary items). Records related to supply catalog and contract specifications, schedules, and publication development; procurement support, supply, and stores; personal property services; travel, transportation, and motor vehicle services; telecommunication services; and administrative support.

17. General Services Administration, Office of the Inspector General (DAA–0269–2015–0002, 8 items, 7 temporary items). Routine case files, administrative files, working papers, and resource and reference material. Proposed for permanent retention are significant investigation, inspection, and audit case files.

18. Military Compensation and Retirement Modernization Commission, Agency-wide (DAA–0220–2016–0002, 8 items, 1 temporary item). Public Web site records. Proposed for permanent retention are reports, correspondence, congressional hearings, biographical information on the Commissioners, public comments and hearings, press releases and issuances.

19. Selective Service System, Agency-wide (DAA–0147–2015–0002, 4 items, 1 temporary item). Organization and mission-related draft correspondence and background materials. Proposed for permanent retention are planning files, organization charts, and public announcements.

Dated: March 23, 2016.

Laurence Brewer,

Director, Records Management Operations.

[FR Doc. 2016–07436 Filed 3–31–16; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: All meetings are Eastern time and ending times are approximate:

Folk & Traditional Arts (review of applications): This meeting will be closed.

Date and time: April 28, 2016; 1:00 p.m. to 2:00 p.m.

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov,* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: March 29, 2016.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2016–07379 Filed 3–31–16; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering #1170.

Date/Time: April 27, 2016: 12:55 p.m. to 5:30 p.m. April 28, 2016: 8:30 a.m. to 12:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230.

Type of Meeting: Open.

Contact Person: Evette Rollins, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230; 703–292–8300.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda

Wednesday, April 27, 2016

- Directorate for Engineering Report
- NSF INCLUDES Panel Discussion
- Energy-efficient Computing Panel Discussion

Thursday, April 28, 2016

- Perspectives from the Office of the Director
- Engineering Research in a World of Big Data
- Big Data
- GERMINATION
- Roundtable on ENG Strategic Activities and Recommendations

Dated: March 29, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–07407 Filed 3–31–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (#1110).

Date and Time: April 25, 2016; 8:30AM—5:00PM. April 26, 2016; 8:30AM—4:00PM.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Please contact Rachel Evans at *rlevans@nsf.gov* to obtain a visitor badge. All visitors to the NSF will be required to show photo ID to obtain a badge.

Type of Meeting: Open.

Contact Person: Charles Liarakos, National Science Foundation, 4201 Wilson Boulevard, Room 605, Arlington, VA 22230; Tel No.: (703) 292–8400

Purpose of Meeting: The Advisory Committee for the Directorate for Biological Sciences (BIO) provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Agenda items will include Leading Edge, NEON science, Portfolio analysis, the Strategic Vision for the Biological Sciences, and other matters relevant to the Directorate for Biological Sciences.

Dated: March 28, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–07394 Filed 3–31–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Executive Committee, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

DATE AND TIME: Wednesday, April 6, 2016 from 1:00–2:00 p.m. EDT.

SUBJECT MATTER: (1) Committee Chair's opening remarks; (2) Approval of Executive Committee minutes of January 2016; (3) Review, discuss and approve an agenda for the NSB meeting scheduled for May 5–6, 2016; (4) Review annual Executive Committee report; (5) Timing for delivery of the annual Merit Review report; and (6) Committee Chair's closing remarks.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening line will be available. Members of the public must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public listening number.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: James Hamos, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8000.

Kyscha Slater-Williams,

Program Specialist.

[FR Doc. 2016–07582 Filed 3–30–16; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on April 22, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Friday, April 22, 2016—8:30 a.m. Until 12:00 p.m.

The Subcommittee will discuss the status of guidance published in support of the draft proposed mitigation of beyond-design-basis events rulemaking and public comments received on the draft proposed rulemaking package. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mike Snodderly (Telephone: 301–415–2241 or Email: *Mike.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone: 240–888–9835) to be escorted to the meeting room.

Dated: March 24, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–07455 Filed 3–31–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee onFukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on April 21, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 21, 2016—1:00 p.m. Until 5:00 p.m.

The Subcommittee will review Group 3 Fukushima Tier 2 and 3 recommendations regarding other natural hazards screening evaluations. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kathy Weaver (Telephone: 301–415–6236 or Email: *Kathy.Weaver@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone: 240–888–9835) to be escorted to the meeting room.

Dated: March 24, 2016.

Mark Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–07461 Filed 3–31–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Apr 1400; Notice of Meeting

The ACRS Subcommittee on APR 1400 will hold a meeting on April 20–21, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

Wednesday, April 20, 2016—8:30 a.m. Until 5:00 p.m.; Thursday, April 21, 2016—8:30 a.m. Until 12:00 p.m.

The Subcommittee will review the APR 1400 introduction and overall design. The Subcommittee will hear presentations by and hold discussions with the NRC staff and Westinghouse regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015, (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated March 24, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–07458 Filed 3–31–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on April 19, 2016, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, April 19, 2016—1:00 p.m. Until 5:00 p.m.

The Subcommittee will review the LaSalle County Station, Units 1 and 2, License Renewal Application. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Exelon Generation Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or Email: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: March 24, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–07456 Filed 3–31–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on April 22, 2016, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, April 22, 2016—1:00 p.m. Until 5:00 p.m.

The Subcommittee will discuss the NRC staff's reassessment of guidance developed for the Phase 1 integrated assessments as directed in the staff requirements memorandum dated July 28, 2015 for COMSECY–15–0019, "Closure Plan for the Reevaluation of Flooding Hazards for Operating Nuclear Power Plants." The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mike Snodderly (Telephone: 301–415–2241 or Email: *Mike.Snodderly@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone: 240–888–9835) to be escorted to the meeting room.

Dated: March 24, 2016.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2016–07457 Filed 3–31–16; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77455; File No. SR–NYSEARCA–2016–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services

March 28, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 21, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services ("Fee Schedule") to exclude from its average daily volume and certain other calculations any trading day on which the Exchange is not open for the entire trading day and/or a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The Exchange proposes to implement the fee change effective March 21, 2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to exclude from its average daily volume ("ADV") and certain other calculations any trading day on which the Exchange is not open for the entire trading day and/or a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours.

The Exchange proposes to implement the fee change effective March 21, 2016.[4]

As provided in the Fee Schedule, many of the NYSE Arca Equities' transaction fees and credits are based on trading and liquidity thresholds that ETP Holders and Market Makers must satisfy in order to qualify for the particular rates. The Exchange believes that trading suspensions or disruptions can prevent ETP Holders and Market Makers from engaging in normal trading and liquidity provision in their assigned securities, leading to decreased trading volume compared to ADV. Accordingly, for purposes of determining transaction fees and credits for these market participants based on trading and liquidity thresholds [sic], ADV, and United States consolidated ADV ("US CADV"),[5] the Exchange proposes to add text to current footnote 1 to the Fee Schedule that would permit the Exchange to exclude any trading day on which (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours. The proposal is consistent with the Exchange's options rules[6] and the rules of its affiliate NYSE MKT LLC.[7]

The proposed change would allow the Exchange to exclude days where the Exchange declares a trading halt in all securities or honors a market-wide trading halt declared by another market. The Exchange's proposal would be similar to the current provision in the Fee Schedule whereby trade activity on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes does not count toward volume tiers.[8] Generally, the market closes early on certain days before or after a holiday observed by the Exchange.[9] The Exchange's proposal is consistent with the rules of other self-regulatory organizations.[10]

The Exchange believes that artificially low volumes of trading on days when the Exchange is not open for the entire trading day reduces the average daily activity of ETP Holders and Market Makers both daily and monthly. Given the decreased trading volumes, the numerator for the monthly calculation (*e.g.,* trading volume) would be correspondingly lower, but the denominator for the threshold calculations (*e.g.,* the number of trading days) would not necessarily be decreased, and could result in an unintended increase in the cost of trading on the Exchange, a result that is unintended and undesirable to the Exchange and its ETP Holders and

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange originally filed to amend the Fee Schedule on March 1, 2016 (SR–NYSEArca–2016–38) and withdrew such filing on March 11, 2016. The Exchange subsequently filed to amend the Fee Schedule on March 11, 2016 (SR–NYSEArca–2016–45) and withdrew such filing on March 21, 2016.

[5] US CADV is used here as defined in footnote 3 to the Fee Schedule.

[6] *See* NYSE Arca Options Fees and Charges ("The Exchange may exclude from the calculation of ADV contracts traded any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption").

[7] *See* NYSE Amex Options Fee Schedule ("The Exchange may exclude from its monthly calculations of contract volume any day that (1) the Exchange is not open for the entire trading day and/or (2) a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours").

[8] *See* footnote 1 in the Fee Schedule.

[9] For example, the Exchange is closed on Thanksgiving Day and closes early on the Friday immediately following Thanksgiving Day (*e.g.,* Friday, November 25, 2016).

[10] *See* notes 5–6 [sic], *supra; see also* NASDAQ Stock Market LLC Rule 7018(j) ("For purposes of determining average daily volume and total consolidated volume under this rule, any day that the market is not open for the entire trading day will be excluded from such calculation."); International Securities Exchange, LLC Fee Schedule ("For purposes of determining Priority Customer ADV, any day that the regular order book is not open for the entire trading day or the Exchange instructs members in writing to route their orders to other markets may be excluded from such calculation; provided that the Exchange will only remove the day for members that would have a lower ADV with the day included.").

Market Makers. The Exchange believes that the authority to exclude days when the Exchange is not open for the entire trading day would provide ETP Holders and Market Makers with greater certainty as to their monthly costs and diminish the likelihood of an effective increase in the cost of trading.[11]

Similarly, the Exchange proposes to modify its Fee Schedule to permit the Exchange to exclude from the above calculations any trading day where a disruption affects an Exchange system that lasts for more than 60 minutes during regular trading hours even if such disruption would not be categorized as a complete outage of the Exchange's system. Such a disruption may occur where a [sic] certain securities traded on the Exchange are unavailable for trading due to an Exchange system issue or where, while the Exchange may be able to perform certain functions with respect to accepting and processing orders, the Exchange may be experiencing a failure to another significant process, such as routing to other market centers, that would lead ETP Holders and Market Makers that rely on such process to avoid utilizing the Exchange until the Exchange's entire system was operational. Once again, the Exchange's proposal is consistent with the rules of other self-regulatory organizations.[12]

The Exchange is not proposing any changes to the level of rebates currently being provided on the Exchange, or to the thresholds required to achieve each rebate tier.

The proposed change is also not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders and Market Makers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that it is reasonable to permit the Exchange to eliminate from the calculation days on which the market is not open the entire trading day because it preserves the Exchange's intent behind adopting volume-based pricing. Similarly, the Exchange believes that its proposal is reasonable because it will help provide ETP Holders and Market Makers with a greater level of certainty as to their level of rebates and costs for trading in any month where the Exchange experiences such a system disruption on one or more trading days. The Exchange is not proposing to amend the thresholds ETP Holders and Market Makers must achieve to become eligible for, or the dollar value associated with, the tiered rebates or fees. By eliminating the inclusion of a trading day on which a system disruption occurs, the Exchange would almost certainly be excluding a day that would otherwise lower ETP Holders' and Market Makers' trading volume, thereby making it more likely for them to meet the minimum or higher tier thresholds and thus incentivizing ETP Holders and Market Makers to increase their participation on the Exchange in order to meet the next highest tier.

The Exchange further believes that the proposal is reasonable because the proposed exclusion seeks to avoid penalizing ETP Holders and Market Makers that might otherwise qualify for certain tiered pricing but that, because of a significant Exchange system problem, would not participate to the extent that they might have otherwise participated. The Exchange believes that certain systems disruptions could preclude some ETP Holders and Market Makers from submitting orders to the Exchange even if such issue is not actually a complete systems outage.

Finally, the Exchange believes that the proposal is equitable and not unfairly discriminatory because the methodology for the monthly calculations would apply equally to all ETP Holders and Market Makers and to all volume tiers. The Exchange notes that, although unlikely, there is some possibility that a certain small proportion of ETP Holders and Market Makers may have a higher ADV as a percentage of average daily volume with their activity included from days where the Exchange experiences a system disruption. The Exchange believes that the proposal would still be equitable and not unfairly discriminatory given that the impacted universe is potentially quite small and that the proposal would benefit the overwhelming majority of market participants and would make the overall cost of trading on the Exchange more predictable for ETP Holders and Market Makers as a whole.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[15] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that, with respect to monthly calculations for rebates, there are very few instances where the exclusion would be invoked, and if invoked, would have little or no impact on trading decisions or execution quality. On the contrary, the Exchange believes that the proposal fosters competition by avoiding a penalty to ETP Holders and Market Makers for days when trading on the Exchange is disrupted for a significant portion of the day and would result in lower total costs to end users, a positive outcome of competitive markets. Further, other options exchanges have adopted rules that are substantially similar to the change in ADV calculation being proposed by the Exchange.[16]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[17] of the Act and subparagraph (f)(2) of Rule 19b–4[18] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

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[11] *See, e.g.,* Securities Exchange Act Release No. 70657 (October 10, 2013), 78 FR 62899 (October 22, 2103) (SR–ISE–2013–51).

[12] *See* notes 5–6 [sic], *supra; see also* BATS BZX Exchange Fee Schedule ("The Exchange excludes from its calculation of ADAV and ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours ("Exchange System Disruption"), on any day with a scheduled early market close and on the last Friday in June (the "Russell Reconstitution Day").

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

[15] 15 U.S.C. 78f(b)(8).

[16] *See* note 5 [sic], *supra.*

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEARCA–2016–48 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2016–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2016–48 and should be submitted on or before April 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07332 Filed 3–31–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77460; File No. SR–NASDAQ–2016–040]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete From the Rulebook Section 10, Limitations on Dealings, of Chapter VII, Market Participants

March 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2016, The NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete from the Exchange's rulebook Section 10, Limitations on Dealings, of Chapter VII, Market Participants.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a principles-based approach to prohibit the misuse of material nonpublic information by NOM Options Market Makers ("Market Makers") by deleting from the Exchange's rulebook Section 10, Limitations on Dealings, of Chapter VII, Market Participants (the "Market Maker Restrictions"). In doing so, the Exchange would harmonize its rules governing Exchange Options Participants,[5] generally, and Exchange Market Makers, in particular, relating to protecting against the misuse of material, non-public information.

The Exchange believes that the Market Maker Restrictions are no longer necessary because all Market Makers are subject to the Exchange's general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Chapter III, Business Conduct, Section 4, Prevention of the Misuse of Material Nonpublic Information, discussed below, which obviates the need for separately-prescribed requirements for a subset of market participants on the Exchange.

Additionally, there is no separate regulatory purpose served by having separate rules for Market Makers. The Exchange notes that this proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to market participants. This is a competitive filing that is based on a proposal recently submitted by NYSE

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[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The term "Options Participant" or "Participant" means a firm or organization that is registered with the Exchange pursuant to Chapter II of the NOM Rules for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker".

MKT LLC ("NYSE MKT") and approved by the Commission.[6]

A Market Maker is an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of the NOM rules.[7] Importantly, all Market Makers have access to the same information in the Exchange's order book. Moreover, Market Makers have no agency obligations on the Exchange's order book. Notwithstanding that Market Makers have access to the same Exchange trading information as all other market participants on the Exchange, the Exchange has specific rules governing how Market Makers may operate.

Proposed Rule Change

The Exchange believes that the Market Maker Restrictions are no longer necessary and proposes to delete them. The Exchange also believes that Chapter III, Section 4, governing the misuse of material, non-public information, provides for an appropriate, principles-based approach to prevent the market abuses the Market Maker Restrictions are designed to address.

Specifically, Chapter III, Section 4, provides that every Options Participant shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Participant's business, to prevent the misuse of material nonpublic information by such Participant or persons associated with such Participant in violation of the federal securities laws or the Rules thereunder, and the Rules of the Exchange.

Chapter III, Section 4, provides that misuse of material nonpublic information includes, but is not limited to: (i) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material nonpublic information concerning that corporation; (ii) trading in an underlying security or related options or other derivative securities, while in possession of material nonpublic information concerning imminent transactions in the underlying security or related securities; and (iii) disclosing to another person any material nonpublic information involving a corporation whose shares are publicly traded or disclosing an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material nonpublic information.

Subsection (c) of Chapter III, Section 4, requires each Options Participant to establish, maintain, and enforce certain policies and procedures as appropriate for the nature of each Participant's business.[8] Under the rule, Participants that are required to file Form X–17A–5 under the Exchange Act or Rules thereunder, with the Exchange on an annual basis only, shall, contemporaneously with those submissions, file attestations signed by such Participants stating that the procedures mandated by this Section have been established, enforced and maintained. The rule requires any Options Participant or associated person who becomes aware of any possible misuse of material nonpublic information to promptly notify Nasdaq Regulation.

Finally, subsection (f) of Chapter III, Section 4, specifies that it may be considered conduct inconsistent with just and equitable principles of trade for any Participant or person associated with a Participant who has knowledge of all material terms and conditions of (i) an order and a solicited order, (ii) an order being facilitated or submitted to NOM for price improvement (*e.g.*, price improving orders), or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms and conditions of the order and any changes in the terms and conditions of the order of which the Participant or person associated with the Participant has knowledge are disclosed, or (b) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. It states that the terms of an order are "disclosed" to NOM Option Participants when the order is entered into the NOM Book.

For purposes of subsection (f), an order to buy or sell a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

Because Options Participants are already subject to the requirements of Chapter III, Section 4, as described above, the Exchange does not believe it necessary to separately require specific limitations on Market Makers. Deleting the Market Maker Restrictions including its requirements for specific procedures would provide Market Makers flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market in a manner similar to how Options Participants on the Exchange currently operate and consistent with Chapter III, Section 4.

Options Participants registered as Market Makers have certain rights and bear certain responsibilities beyond those of other Options Participants.[9]

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[6] *See* Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving SR–NYSEMKT–2015–23). *See also* Securities Exchange Act Release Nos. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR–ISE–2015–26) and 76687 (December 18, 2015), 80 FR 80403 (December 24, 2015) (SR–PHLX–2015–85).

[7] *See* Chapter I, General Provisions, Section 1, Definitions, subsection (a)(26).

[8] In particular, the rule requires that (i) all associated persons must be advised in writing of the prohibition against the misuse of material nonpublic information; (ii) signed attestations from the Participant and all associated persons affirming their awareness of, and agreement to abide by, the aforementioned prohibitions must be maintained for at least three (3) years, the first two (2) years in an easily accessible place; (iii) records of all brokerage accounts maintained by the Participant and all associated persons must be acquired and maintained for at least three (3) years, the first two (2) years in an easily accessible place, and such brokerage accounts must be reviewed periodically by the Participant for the purpose of detecting the possible misuse of material nonpublic information; and (iv) any business dealings the Participant may have with any corporation whose securities are publicly traded, or any other circumstances that may result in the Participant receiving, in the ordinary course of business, material nonpublic information concerning any such corporation, must be identified and documented.

[9] Chapter VII, Section 5, Obligations of Market Makers, of the NOM rules provides that in registering as a Market Maker, an Options Participant commits himself to various obligations and that transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. The rule states that Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings and that ordinarily, Market Makers are expected to (i) during trading hours, maintain a two-sided market, pursuant to Section 6(d)(i) of Chapter VII, in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market, (ii) [Reserved], (iii) engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class, (iv) compete with other Market Makers in all options in which the Market Maker is registered to trade, (v) make markets that will be honored for the number of contracts entered into NOM's System in all options in which the Market Maker is registered to trade (vi) update quotations in response to changed

Continued

Market Makers are distinguished under Exchange rules from other Options Participants in that Market Makers have quoting obligations.[10] However, none of these heightened obligations or different entitlements provides different or greater access to nonpublic information than any other Options Participant on the Exchange. Accordingly, because Market Makers do not have any trading advantages at the Exchange due to their market role, the Exchange believes they should be subject to the same rules as other Options Participants regarding the protection against the misuse of material non-public information, which in this case is existing Chapter III, Section 4.[11]

The Exchange is not proposing to change what is considered to be material, nonpublic information that an affiliated brokerage business of a Market Maker could share with such Market Maker. In that regard, the proposed rule change will not permit affiliates of a Market Maker to have access to any non-public order or quote information of the Market Maker, including hidden or undisplayed size or price information of such orders or quotes. Affiliates of Market Makers would only have access to orders and quotes that are publicly available to all market participants. Members do not expect to receive any additional order or quote information as a result of this proposed rule change.

The Exchange does not believe that there will be any material change to member information barriers as a result of the removal of the Exchange pre-approval requirement. The Exchange has rules prohibiting Options Participants from disadvantaging their customers or other market participants by improperly capitalizing on the Options Participant's access to or receipt of material, non-public information.[12]

Further, the Exchange does not believe there will be any material change to Market Maker information barriers as a result of removal of the Exchange's pre-approval requirements. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to Market Maker information barriers as necessary to protect against the misuse of material, non-public information. The Exchange also suggests that the pre-approval requirement is unnecessary because Market Makers do not have agency responsibilities to orders in the book, or time and place information advantages because of their market role.

The Exchange notes that its proposed principles-based approach to protecting against the misuse of material non-public information for all its Options Participants is consistent with recently filed and approved rule changes for NYSE MKT, NYSE Arca Equities, Inc. ("NYSE Arca"), BATS Exchange, Inc. ("BATS"), and New York Stock Exchange LLC ("NYSE") governing cash equity market makers on those respective exchanges.[13]

Except for prescribed rules relating to floor-based designated market makers on the NYSE, who have access to specified non-public trading information, each of these exchanges have moved to a principles-based approach to protecting against the misuse of material non-public information. In connection with approving those rule changes, the Commission found that, with adequate oversight by the exchanges of their members, eliminating prescriptive information barrier requirements should not reduce the effectiveness of exchange rules requiring members to establish and maintain systems to supervise the activities of members, including written procedures reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange.

The Exchange believes that a principles-based rule applicable to members of options markets would be equally effective in protecting against the misuse of material non-public information.[14] Indeed, Chapter III, Section 4, is currently applicable to Market Makers and already requires policies and procedures reasonably designed to protect against the misuse of material nonpublic information, which is similar to the respective NYSE MKT, NYSE Arca Equities, BATS, and NYSE rules governing cash equity market makers. The Exchange believes Chapter III, Section 4, provides appropriate protection against the misuse of material nonpublic information by Market Makers such that there is no further need for prescriptive information barrier requirements as set forth in the Market Maker Restrictions.

The Exchange notes that even with this proposed rule change, pursuant to Chapter III, Section 4, a Market Maker would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, including without limitation, Regulation

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market conditions in all options in which the Market Maker is registered to trade (vii) maintain active markets in all options in which the Market Maker is registered, and (viii) honor all orders that the Trading System routes to away markets pursuant to Chapter XII of the NOM rules. Section 5 further provides that Market Makers should not effect purchases or sales on NOM except in a reasonable and orderly manner. If Nasdaq Regulation finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of Section 5, such Market Maker will be subject to disciplinary action or suspension or revocation of registration in one or more of the securities in which the Market Maker is registered.

[10] Section 6, Market Maker Quotations, of Chapter VII, Market Participants, details specific Market Maker quoting obligations.

[11] The Exchange notes that by deleting the Market Maker Restrictions, the Exchange would no longer require specific information barriers for Market Makers or require pre-approval of any information barriers that a Market Maker would erect for purposes of protecting against the misuse of material non-public information. However, the policies and procedures of Market Makers, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

[12] For example, Chapter XI, Doing Business with the Public, Section 8, Supervision of Accounts, provides in part that each member that conducts a public customer options business shall ensure that its written supervisory system policies and procedures pursuant to NASD Rules 3010, 3012, and 3013 adequately address the member's public customer options business. The Exchange has separately filed a proposed rule change to replace references to these NASD rules with FINRA rules which have replaced them. *See* SR–NASDAQ–2016–038 filed March 14, 2016.

[13] *See* Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Specialists and e-Specialists by Deleting Rule 927.3NY and Section (f) of Rule 927.5NY). *See also* Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR–NYSEArca-2009–78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) ("Arca Approval Order"); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR–BATS–2010–003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, nonpublic information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) ("BATS Approval Order"); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), SR–NYSE–2014–12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) ("NYSE Approval Order"); and 76687 (December 18, 2015), 80 FR 80403 (December 24, 2015) (SR–PHLX–2015–85).

[14] International Securities Exchange, Inc. ("ISE") and BOX Options Exchange LLC ("BOX") have recently taken a similar approach. *See* Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Principles-Based Approach to Prohibit the Misuse of Material, Non-public Information by Market Makers by Deleting Rule 810, Securities Exchange Act Release No. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR–ISE–2015–26). *See also* Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Principles-based Approach to Prohibit the Misuse of Material Nonpublic Information by Market Makers, Securities Exchange Act Release No. 75916 (September 14, 2015), 80 FR 56503 (September 18, 2015) (SR–BOX–2015–31).

SHO[15] under the Act and Section 15(g) of the Act,[16] and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information.

While information barriers would not specifically be required under the proposal, Chapter III, Section 4, already requires that an Options Participant consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange believes that the proposed reliance on principles-based Chapter III, Section 4 would ensure that a Market Maker would be required to protect against the misuse of any material non-public information. Chapter III, Section 4 already requires that firms refrain from trading while in possession of material non-public information concerning imminent transactions in the security or related product.

The Exchange believes that moving to a principles-based approach rather than prescribing how and when to wall off a Market Maker from the rest of the firm would provide Market Makers with flexibility when managing risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles based approach to permit a member or member organization to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material non-public information and provide flexibility on how a Market Maker structures its operations.

The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which members and member organizations are subject—Section 4, Prevention of the Misuse of Material Nonpublic Information, of Chapter III, Business Conduct—and harmonizes the rules governing Options Participants. Moreover, Market Makers would continue to be subject to federal and Exchange requirements for protecting material non-public order information.[19]

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange's approach to protecting against the misuse of material nonpublic information and no longer subject Market Makers to prescriptive requirements. The Exchange does not believe that the existing prescriptive requirements applicable to Market Makers are narrowly tailored to their roles because Market Makers do not have access to Exchange trading information in a manner different from any other market participant on the Exchange.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to members and member organizations the type of conduct that is prohibited by the Exchange. While the proposal eliminates prescriptive requirements relating to the misuse of material non-public information, Market Makers would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, nonpublic information. Additionally, the policies and procedures of Market Makers, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange.

The Exchange notes that the proposed rule change would still require that Market Makers maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules.

Even though there would no longer be pre-approval of Market Maker information barriers, any Market Maker written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should not reduce the effectiveness of the Exchange rules to protect against the misuse of material non-public information. Rather, Options Participants will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself.

Moreover, while specified information barriers may no longer be required, an Options Participant's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to Market Makers, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, the rule change is being proposed as a competitive response to a filing submitted by NYSE MKT that was recently approved by the Commission.

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[15] The Commission adopted a narrow exception to Regulation SHO's "locate" requirement only for market makers engaged in bona fide market making in the security at the time they effect the short sale. *See* 17 CFR 242.203(b)(2)(iii). *See* also Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (Aug. 6, 2004); Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690, 61698–9 (Oct. 17, 2008). Broker-dealers would not be able to rely on the Exchange's or any self-regulatory organization's designation of market marking for eligibility for the bona-fide market making exception to the "locate" requirement, as such designations are distinct and independent from Regulation SHO. Eligibility for the bona-fide market making exception depends on the facts and circumstances and a determination of bona-fide market making is based on the Commission's factors outlined in the aforementioned Regulation SHO releases. It should also be noted that a determination of bona-fide market making is relevant for the purposes of close-out obligations under Rule 204 of Regulation SHO. *See* 17 CFR 242.204(a)(3).

[16] 15 U.S.C. 78o(g).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* 15 U.S.C. 78o(g) and Chapter III, Section 4 of the Exchange's rulebook.

The Exchange believes that the proposal will enhance competition by allowing Market Makers to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon Market Makers.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for Options Participants which currently exists as a result of disparate rule treatment between options and equities markets regarding how to protect against the misuse of material non-public information. For those members and member organizations that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information.

The Exchange believes it would remove a burden on competition to enable members and member organizations to similarly apply a principles-based approach to protecting against the misuse of material nonpublic information in the options space as ISE has recently done. To this end, the Exchange notes that Chapter III, Section 4, still requires a Market Maker to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material nonpublic information. However, with this proposed rule change, an Options Participant that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would help facilitate the harmonization of information barrier rules across options exchanges. The Exchange represents that Exchange rules still require a Market Maker to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material nonpublic information. Further, the Exchange represents that the proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to market participants. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest.[21] The Commission hereby grants the waiver and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–040. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2016–040 and should be submitted on or before April 22, 2016.

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[20] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07337 Filed 3–31–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77461; File No. SR–BX–2016–018)

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete From the Exchange's Rulebook Section 10, Limitations on Dealings, of Chapter VII, Market Participants

March 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2016, NASDAQ BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete from the Exchange's rulebook Section 10, Limitations on Dealings, of Chapter VII, Market Participants.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt a principles-based approach to prohibit the misuse of material nonpublic information by BX Options Market Makers ("Market Makers") by deleting from the Exchange's rulebook Section 10, Limitations on Dealings, of Chapter VII, Market Participants (the "Market Maker Restrictions"). In doing so, the Exchange would harmonize its rules governing Exchange Options Participants[5] generally and Exchange Market Makers in particular relating to protecting against the misuse of material, non-public information. The Exchange believes that the Market Maker Restrictions are no longer necessary because all Market Makers are subject to the Exchange's general principles-based requirements governing the protection against the misuse of material, non-public information, pursuant to Chapter III, Business Conduct, Section 4, Prevention of the Misuse of Material Nonpublic Information, discussed below, which obviates the need for separately-prescribed requirements for a subset of market participants on the Exchange. Additionally, there is no separate regulatory purpose served by having separate rules for Market Makers. The Exchange notes that this proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to market participants. This is a competitive filing that is based on a proposal recently submitted by NYSE MKT LLC ("NYSE MKT") and approved by the Commission.[6]

A Market Maker is an Options Participant registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VII of the BX rules.[7] Importantly, all Market Makers have access to the same information in the Exchange's order book. Moreover, Market Makers have no agency obligations on the Exchange's order book. Notwithstanding that Market Makers have access to the same Exchange trading information as all other market participants on the Exchange, the Exchange has specific rules governing how Market Makers may operate.

Proposed Rule Change

The Exchange believes that the Market Maker Restrictions are no longer necessary and proposes to delete them. The Exchange believes that Chapter III, Section 4 governing the misuse of material, non-public information, provides for an appropriate, principles-based approach to prevent the market abuses the Market Maker Restrictions are designed to address. Specifically, Chapter III, Section 4 provides that every Options Participant shall establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the Participant's business, to prevent the misuse of material nonpublic information by such Participant or persons associated with such Participant in violation of the federal securities laws or the Rules thereunder, and the Rules of the Exchange. Chapter III, Section 4 provides that misuse of material nonpublic information includes, but is not limited to: (i) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material nonpublic information concerning that corporation; (ii) trading in an underlying security or related options or other derivative securities, while in possession of material nonpublic information concerning imminent transactions in the underlying security or related securities; and (iii) disclosing to another person any material nonpublic information involving a corporation whose shares are publicly traded or disclosing an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material nonpublic information. Subsection (c) of Chapter III, Section 4, requires each Options Participant to establish, maintain and enforce certain policies and procedures as appropriate for the nature of each Participant's business.[8] Under the rule, Participants that are required to file Form X–17A–5 under the Exchange Act or Rules thereunder, with the Exchange on an annual basis only, shall, contemporaneously with those submissions, file attestations signed by such Participants stating that the procedures mandated by this Section have been established, enforced and maintained. The rule requires any Options Participant or associated person who becomes aware of any possible misuse of material nonpublic information to promptly notify BX Regulation.

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[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the BX rules for purposes of participating in options trading on BX Options as a "BX Options Order Entry Firm" or "BX Options Market Maker."

[6] *See* Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving SR–NYSEMKT–2015–23). *See also* Securities Exchange Act Release Nos. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR–ISE–2015–26) and 76687 (December 18, 2015), 80 FR 80403 (December 24, 2015) (SR–PHLX–2015–85).

[7] See Chapter I, General Provisions, Section 1, Definitions, subsection (a)(9).

Finally, subsection (f) of Chapter III, Section 4 specifies that it may be considered conduct inconsistent with just and equitable principles of trade for any Participant or person associated with a Participant who has knowledge of all material terms and conditions of (i) an order and a solicited order, (ii) an order being facilitated or submitted to BX Options for price improvement, or (iii) orders being crossed; the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option for the same underlying security as any option that is the subject of the order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until (a) the terms and conditions of the order and any changes in the terms and conditions of the order of which the Participant or person associated with the Participant has knowledge are disclosed, or (b) the trade can no longer reasonably be considered imminent in view of the passage of time since the order was received. It states that the terms of an order are "disclosed" to BX Options Participants when the order is entered into the BX Options Book. For purposes of subsection (f), an order to buy or sell a "related instrument" means, in reference to an index option, an order to buy or sell securities comprising 10% or more of the component securities in the index or an order to buy or sell a futures contract on an economically equivalent index.

Because Options Participants are already subject to the requirements of Chapter III, Section 4 as described above, the Exchange does not believe it necessary to separately require specific limitations on Market Makers. Deleting the Market Maker Restrictions including its requirements for specific procedures would provide Market Makers flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model, business activities, or the securities market in a manner similar to how Options Participants on the Exchange currently operate and consistent with Chapter III, Section 4.

Options Participants registered as Market Makers have certain rights and bear certain responsibilities beyond those of other Options Participants.[9] Market Makers are distinguished under Exchange rules from other Options Participants in that Market Makers have quoting obligations.[10] However, none of these heightened obligations or different entitlements provides different or greater access to nonpublic information than any other Options Participant on the Exchange. Accordingly, because Market Makers do not have any trading advantages at the Exchange due to their market role, the Exchange believes they should be subject to the same rules as other Options Participants regarding the protection against the misuse of material non-public information, which in this case is existing Chapter III, Section 4.[11]

The Exchange is not proposing to change what is considered to be material, nonpublic information that an affiliated brokerage business of a Market Maker could share with such Market Maker. In that regard, the proposed rule change will not permit affiliates of a Market Maker to have access to any non-public order or quote information of the Market Maker, including hidden or undisplayed size or price information of such orders or quotes. Affiliates of Market Makers would only have access to orders and quotes that are publicly available to all market participants. Members do not expect to receive any additional order or quote information as a result of this proposed rule change. The Exchange does not believe that there will be any material change to member information barriers as a result of the removal of the Exchange pre-approval requirement. The Exchange has rules prohibiting Options Participants from disadvantaging their customers or other market participants by improperly capitalizing on the Options Participant's access to or receipt of material, non-public information.[12]

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[8] In particular, the rule requires that (i) all associated persons must be advised in writing of the prohibition against the misuse of material nonpublic information; (ii) signed attestations from the Participant and all associated persons affirming their awareness of, and agreement to abide by, the aforementioned prohibitions must be maintained for at least three (3) years, the first two (2) years in an easily accessible place; (iii) records of all brokerage accounts maintained by the Participant and all associated persons must be acquired and maintained for at least three (3) years, the first two (2) years in an easily accessible place, and such brokerage accounts must be reviewed periodically by the Participant for the purpose of detecting the possible misuse of material nonpublic information; and (iv) any business dealings the Participant may have with any corporation whose securities are publicly traded, or any other circumstances that may result in the Participant receiving, in the ordinary course of business, material nonpublic information concerning any such corporation, must be identified and documented.

[9] Chapter VII, Section 5, Obligations of Market Makers, of the BX provides that in registering as a Market Maker, an Options Participant commits himself to various obligations and that transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. The rule states that Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings and that ordinarily, Market Makers are expected to (i) during trading hours, maintain a two-sided market, pursuant to Section 6(d)(i) of Chapter VII, in those options in which the Market Maker is registered to trade, in a manner that enhances the depth, liquidity and competitiveness of the market, (ii) [Reserved], (iii) engage, to a reasonable degree under the existing circumstances, in dealings for their own accounts when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of (or demand for) a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class, (iv) compete with other Market Makers in all options in which the Market Maker is registered to trade, (v) make markets that will be honored for the number of contracts entered into BX Options' System in all options in which the Market Maker is registered to trade (vi) update quotations in response to changed market conditions in all options in which the Market Maker is registered to trade (vii) maintain active markets in all options in which the Market Maker is registered (viii) honor all orders that the Trading System routes to away markets pursuant to Chapter XII of the BX rules. Section 5 further provides that Market Makers should not effect purchases or sales on BX Options except in a reasonable and orderly manner. If BX Regulation finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of Section 5, such Market Maker will be subject to disciplinary action or suspension or revocation of registration in one or more of the securities in which the Market Maker is registered.

[10] Section 6, Market Maker Quotations, of Chapter VII, Market Participants, details specific Market Maker quoting obligations.

[11] The Exchange notes that by deleting the Market Maker Restrictions, the Exchange would no longer require specific information barriers for Market Makers or require pre-approval of any information barriers that a Market Maker would erect for purposes of protecting against the misuse of material non-public information. However, the policies and procedures of Market Makers, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

[12] For example, Chapter XI, Doing Business with the Public, Section 8, Supervision of Accounts, provides in part that each member that conducts a public customer options business shall ensure that its written supervisory system policies and

Further, the Exchange does not believe there will be any material change to Market Maker information barriers as a result of removal of the Exchange's pre-approval requirements. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to Market Maker information barriers as necessary to protect against the misuse of material, non-public information. The Exchange also suggests that the pre-approval requirement is unnecessary because Market Makers do not have agency responsibilities to orders in the book, or time and place information advantages because of their market role.

The Exchange notes that its proposed principles-based approach to protecting against the misuse of material non-public information for all its Options Participants is consistent with recently filed and approved rule changes for NYSE MKT, NYSE Arca Equities, Inc. ("NYSE Arca"), BATS Exchange, Inc. ("BATS"), and New York Stock Exchange LLC ("NYSE") governing cash equity market makers on those respective exchanges.[13] Except for prescribed rules relating to floor-based designated market makers on the NYSE, who have access to specified non-public trading information, each of these exchanges have moved to a principles-based approach to protecting against the misuse of material non-public information. In connection with approving those rule changes, the Commission found that, with adequate oversight by the exchanges of their members, eliminating prescriptive information barrier requirements should not reduce the effectiveness of exchange rules requiring members to establish and maintain systems to supervise the activities of members, including written procedures reasonably designed to ensure compliance with applicable federal securities law and regulations, and with the rules of the applicable exchange.

The Exchange believes that a principles based rule applicable to members of options markets would be equally effective in protecting against the misuse of material non-public information.[14] Indeed, Chapter III, Section 4 is currently applicable to Market Makers and already requires policies and procedures reasonably designed to protect against the misuse of material nonpublic information, which is similar to the respective NYSE MKT, NYSE Arca Equities, BATS and NYSE rules governing cash equity market makers. The Exchange believes Chapter III, Section 4 provides appropriate protection against the misuse of material nonpublic information by Market Makers such that there is no further need for prescriptive information barrier requirements as set forth in the Market Maker Restrictions.

The Exchange notes that even with this proposed rule change, pursuant to Chapter III, Section 4, a Market Maker would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to achieve compliance with applicable federal securities law and regulations, including without limitation, Regulation SHO[15] under the Act and Section 15(g) of the Act,[16] and with applicable Exchange rules, including being reasonably designed to protect against the misuse of material, non-public information. While information barriers would not specifically be required under the proposal, Chapter III, Section 4 already requires that an Options Participant consider its business model or business activities in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange believes that the proposed reliance on principles-based Chapter III, Section 4 would ensure that a Market Maker would be required to protect against the misuse of any material non-public information. Chapter III, Section 4 already requires that firms refrain from trading while in possession of material non-public information concerning imminent transactions in the security or related product. The Exchange believes that moving to a principles-based approach rather than prescribing how and when to wall off a Market Maker from the rest of the firm would provide Market Makers with flexibility when managing risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments

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procedures pursuant to NASD Rules 3010, 3012, and 3013 adequately address the member's public customer options business. The Exchange has separately filed a proposed rule change to replace references to these NASD rules with FINRA rules which have replaced them. *See* SR–BX–2016–017 filed March 14, 2016.

[13] *See* Securities Exchange Act Release No. 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Specialists and e-Specialists by Deleting Rule 927.3NY and Section (f) of Rule 927.5NY). See also Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR–NYSEArca–2009–78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) ("Arca Approval Order"); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR–BATS–2010–003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, nonpublic information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) ("BATS Approval Order"); 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014), SR–NYSE–2014–12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material non-public information) ("NYSE Approval Order"); and 76687 (December 18, 2015), 80 FR 80403 (December 24, 2015) (SR–PHLX–2015–85).

[14] International Securities Exchange, Inc. ("ISE") and BOX Options Exchange LLC ("BOX") have recently taken a similar approach. *See* Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Principles-Based Approach to Prohibit the Misuse of Material, Non-public Information by Market Makers by Deleting Rule 810, Securities Exchange Act Release No. 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR–ISE–2015–26). *See also* Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Principles-based Approach to Prohibit the Misuse of Material Nonpublic Information by Market Makers, Securities Exchange Act Release No. 75916 (September 14, 2015), 80 FR 56503 (September 18, 2015) (SR–BOX–2015–31).

[15] The Commission adopted a narrow exception to Regulation SHO's "locate" requirement only for market makers engaged in bona fide market making in the security at the time they effect the short sale. *See* 17 CFR 242.203(b)(2)(iii). *See* also Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (Aug. 6, 2004); Exchange Act Release No. 58775 (Oct. 14, 2008), 73 FR 61690, 61698–9 (Oct. 17, 2008). Broker-dealers would not be able to rely on the Exchange's or any self-regulatory organization's designation of market marking for eligibility for the bona-fide market making exception to the "locate" requirement, as such designations are distinct and independent from Regulation SHO. Eligibility for the bona-fide market making exception depends on the facts and circumstances and a determination of bona-fide market making is based on the Commission's factors outlined in the aforementioned Regulation SHO releases. It should also be noted that a determination of bona-fide market making is relevant for the purposes of close-out obligations under Rule 204 of Regulation SHO. *See* 17 CFR 242.204(a)(3).

[16] 15 U.S.C. 78o(g).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

to and perfect the mechanism of a free and open market by adopting a principles based approach to permit a member or member organization to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material non-public information and provide flexibility on how a Market Maker structures its operations.

The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which members and member organizations are subject—Section 4, Prevention of the Misuse of Material Nonpublic Information, of Chapter III, Business Conduct—and harmonizes the rules governing Options Participants. Moreover, Market Makers would continue to be subject to federal and Exchange requirements for protecting material non-public order information.[19] The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange's approach to protecting against the misuse of material nonpublic information and no longer subject Market Makers to prescriptive requirements. The Exchange does not believe that the existing prescriptive requirements applicable to Market Makers are narrowly tailored to their roles because Market Makers do not have access to Exchange trading information in a manner different from any other market participant on the Exchange.

The Exchange further believes the proposal is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to members and member organizations the type of conduct that is prohibited by the Exchange. While the proposal eliminates prescriptive requirements relating to the misuse of material non-public information, Market Makers would remain subject to existing Exchange rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange rules, including the prohibition on the misuse of material, nonpublic information. Additionally, the policies and procedures of Market Makers, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange.

The Exchange notes that the proposed rule change would still require that Market Makers maintain and enforce policies and procedures reasonably designed to ensure compliance with applicable federal securities laws and regulations and with Exchange rules. Even though there would no longer be pre-approval of Market Maker information barriers, any Market Maker written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of prescribed restrictions should not reduce the effectiveness of the Exchange rules to protect against the misuse of material non-public information. Rather, Options Participants will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover, while specified information barriers may no longer be required, an Options Participant's business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to Market Makers, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material non-public information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As indicated above, the rule change is being proposed as a competitive response to a filing submitted by NYSE MKT that was recently approved by the Commission. The Exchange believes that the proposal will enhance competition by allowing Market Makers to comply with applicable Exchange rules in a manner best suited to their business models, business activities, and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon Market Makers.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for Options Participants which currently exists as a result of disparate rule treatment between options and equities markets regarding how to protect against the misuse of material non-public information. For those members and member organizations that are also members of equity exchanges, their respective equity market maker operations are now subject to a principles-based approach to protecting against the misuse of material non-public information. The Exchange believes it would remove a burden on competition to enable members and member organizations to similarly apply a principles-based approach to protecting against the misuse of material nonpublic information in the options space as ISE has recently done. To this end, the Exchange notes that Chapter III, Section 4 still requires a Market Maker to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material nonpublic information. However, with this proposed rule change, an Options Participant that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage its risks across multiple security classes, while at the same time protecting against the misuse of material non-public information.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[20]

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[19] *See* 15 U.S.C. 78o(g) and Chapter III, Section 4 of the Exchange's rulebook.

[20] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would help facilitate the harmonization of information barrier rules across options exchanges. The Exchange represents that Exchange rules still require a Market Maker to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material nonpublic information. Further, the Exchange represents that the proposed rule change will not decrease the protections against the misuse of material, non-public information; instead, it is designed to provide more flexibility to market participants. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest.[21] The Commission hereby grants the waiver and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2016–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2016–018 and should be submitted on or before April 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07336 Filed 3–31–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77454; File No. SR–NASDAQ–2016–039]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Maximum Number of Times an Order on Nasdaq May Be Updated Before The System Cancels The Order

March 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to proposal [sic] to modify the maximum number of times an Order on Nasdaq may be updated before the System cancels the Order.

The text of the proposed rule change is available on Nasdaq's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of Nasdaq, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Nasdaq will cancel an Order if it is updated a certain number of times during any given day. Pursuant to Rule 4702(a), an Order will be cancelled if it is repriced and/or reentered 10,000 times for any reason.[3]

Pursuant to Rule 4702(b)(7)(A), a Market Maker Peg Order will be canceled if it is repriced 1,000 times. Pursuant to Rule 4703(d), an Order with Primary Pegging will be cancelled if it is updated 1,000 times, and an Order with Market Pegging will be cancelled if it is updated 10,000 times.

Nasdaq applies these limits to conserve System resources by limiting the persistence of Orders that update repeatedly without execution. These limits are applied daily to each order entered into the System. Orders that have a Time-in-Force[4] that allows them to persist longer than a single trading day will have their count reset each day. For example, if an Order with a Time-in-Force of Good-till-Canceled[5] is repriced 9,999 times during any given day, the Order will not be canceled due to the number of updates. Starting the next day, the Order would be again allowed to reprice up to 9,999 times before it would be canceled by the System.

Proposed Changes

First, Nasdaq is proposing to eliminate rule text under Rules 4702(a), 4702(b)(7)(A), and 4703(d) concerning cancellation based on Order updates and consolidate the concept under a new Rule 4756(a)(4).

Second, Nasdaq is proposing to no longer state the specific number of times a particular Order Type may be updated before it is canceled in the new rule and is, instead, noting that the number of permissible changes may vary by Order Type or Order Attribute and may change from time to time. Further, the proposed rule will note that Nasdaq will post on its Web site what is considered a change for a particular Order Type and Order Attribute, and the current limits on the number of such changes.

Nasdaq is changing the process by which it counts updates, which will allow it to identify a wider range of updates to an Order. Using the new process, Nasdaq will be able to track the following Order updates: (1) System-generated child orders; (2) display size refreshes from reserve; (3) replaces of System-generated child Orders (which include Orders with a Pegging Attribute); and (4) cancellation requests of System-generated child Orders. Nasdaq notes that all updates identified by the current process will be counted under the new process. Nasdaq believes these changes will provide it with greater flexibility in addressing changes in volume, market participant behavior, and Nasdaq's capacity to handle the message volume caused by Orders that update a significant number of times throughout the trading day.

Nasdaq will provide at least one day's advanced notice to the public of any changes to the number of updates permitted before an Order is canceled. Initially, Nasdaq will keep the number of updates consistent with what is currently noted in the rules; however, Nasdaq may shortly thereafter change the number of updates as needed to address market conditions.

Nasdaq is also making two minor technical corrections to Rule 4703(d) to remove an erroneous quote from the rule text.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(5) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Excessive updating of Orders places a burden on Nasdaq's System, which, if left unchecked, could potentially affect overall market quality. Nasdaq will continue canceling Orders that reach a certain number of updates but, instead of the static number of updates stated in the rules, Nasdaq is proposing to provide the number of updates by Order type or Order Attribute on its public Web site. Web site posting will allow Nasdaq to react more quickly to changes in the marketplace by changing the applicable number of updates that will trigger cancellation of an Order. Nasdaq will provide advanced notice to market participants of any changes to the number of updates applied. Thus, the proposed rule change will further promote the protection investors [sic] and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[8] Nasdaq is proposing to make the change because it will allow it to better manage market quality for all market participants, who would be negatively impacted by issues caused by Orders that tax System resources due to the excessive number of updates.

These adjustments will not impact competition among market participants because the cancellation parameters will apply equally to all market participants. As is the case now, market participants that have an Order canceled due to the number of updates may enter a new replacement Order. Thus, Nasdaq does not think that the proposed change will place a burden on competition not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

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[3] Orders entered through OUCH and FLITE ports generally are not repriced or reentered. As explained in rule 4702(b)(1)(B), orders entered through OUCH and FLITE may be updated for display once. Further, OUCH and FLITE Orders may only be decremented in size, which is not considered repricing or reentry of the Order. *See http://www.nasdaqtrader.com/Trader.aspx?id=TradingSpecs* for a description of the various order entry port specifications.

[4] The "Time-in-Force" assigned to an Order means the period of time that the Nasdaq Market Center will hold the Order for potential execution. *See* Rule 4703(a).

[5] An Order that is designated to deactivate one year after entry may be referred to as a "Good-till-Cancelled." *See* Rule 4703(a)(3).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

19(b)(3)(A)(iii) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–039 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–039. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–039 and should be submitted on or before April 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07331 Filed 3–31–16; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(a)(iii) [sic].

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77457; File No. SR–BX–2016–019]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rule 4770 To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

March 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2016, NASDAQ BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to adopt Exchange Rule 4770 to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program. The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ BX, Inc., NASDAQ PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act [4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program ("Pilot").[6]

The Participants filed the Plan to comply with an order issued by the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (order approving SR–BATS–2015–102); *see also* Securities Exchange Act Release No. 77310 (March 7, 2016), 81 FR 13012 (March 11, 2016) (notice for comment and immediate effectiveness of SR–BATS–2016–27).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

Commission on June 24, 2014.[7] The Plan[8] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require Members[10] to comply with the applicable data collection requirements of the Plan.[11]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).[12] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments.

Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[16] will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (*e.g.,* transaction costs by order size), execution quality (*e.g.,* speed of order executions), market maker activity, competition between trading venues (*e.g.,* routing frequency of market orders), transparency (*e.g.,* choice between displayed and hidden orders), and market dynamics (*e.g.,* rates and speed of order cancellations).[17]

The Commission also noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.[18]

Compliance With the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.[19] Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers[20] to submit variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, *e.g.,* from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.[21]

Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer ("NBBO") quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority ("DEA") for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

The Exchange is therefore proposing Rule 4770(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Rule 4770(b) is substantially similar to proposed rule changes by BZX that were recently approved or published by the Commission to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[22]

Proposed Rule 4770(b)(1) requires that a Member that operates a Trading Center shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a Member that is a Market Maker shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

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[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Capitalized terms used in this rule filing are defined in the Plan, unless otherwise specified herein.

[9] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[10] The term "Member" or "Exchange Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 0120(i).

[11] The Exchange proposes Commentary .11 to Rule 4770 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan.

[14] *See* Section VI(C) of the Plan.

[15] *See* Section VI(D) of the Plan.

[16] 17 CFR 242.611.

[17] *See* Approval Order, 80 FR at 27543.

[18] *Id.*

[19] The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange intends to separately propose rules that would require compliance by its Members with the applicable quoting and trading requirements specified in the Plan, and has reserved Paragraph (a) for such rules.

[20] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[21] 17 CFR 242.605.

[22] *See supra* note 3.

Proposed Rule 4770(b)(2) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the Member that generated the data.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker[23] engaging in trading activity on a Trading Center operated by the Participant. The Exchange is therefore proposing Rule 4770(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 4770(b)(3)(A) provides that a Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date.

The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T + 4 for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange understands that some Members may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan's data collection requirements. In such case, a DEA that is not a Participant of the Plan would not have an obligation to collect the data required under subparagraph (b)(3)(A) of Rule 4770 and in accordance with Item IV of Appendix B of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 4770 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 4770(b) to FINRA, which is a Participant to the Plan and is to collect data relating to Item IV of Appendix B of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[24]

Proposed Rule 4770(b)(3)(C) provides that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to Rule 4770(b)(3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end.

Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Rule 4770(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 4770(b)(4)(A) requires that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center.

The proposed rule also requires Members to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

For the same reasons set forth above for subparagraph (b)(3)(B) to Rule 4770, the Exchange proposes to adopt subparagraph (b)(4)(B) to Rule 4770 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 4770(b) to FINRA. As stated above, FINRA is a Participant to the Plan and is to collect data relating to Item I of Appendix C of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading

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[23] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[24] FINRA members for which FINRA is their DEA should refer to the Market Maker Transaction Data Technical Specification on the FINRA Web site at *http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs.pdf.*

Centers to comply with the Plan's data collection requirements.[25]

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) Ticker symbol; (ii) the Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers.

Therefore, the Exchange proposes to adopt Rule 4770(b)(5) providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange is also proposing, through Commentary, to clarify other aspects of the data collection requirements.[26] Proposed Commentary .02 relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a "yes/no" field relating to the Retail Investor Order flag. The Exchange is proposing Commentary .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report "y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "n" for all other instances.[27] The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (*i.e.,* Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

Commentary .03 requires that Members populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.[28] Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor ("SIP") calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock's reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (*e.g.,* the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Commentary .03 also requires, for securities that may trade in a foreign market, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) Fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in securities that may trade in a foreign market Pilot and Pre-Pilot Securities as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the member. The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan's quoting and trading requirements, and could otherwise compromise the integrity of the data.

Commentary .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).[29] The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.[30]

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[25] *Id.*

[26] The Exchange is also proposing Commentary .01 to Rule 4770 to clarify that certain enumerated terms used throughout Rule 4770 shall have the same meaning as set forth in the Plan.

[27] FINRA, on behalf of the Plan Participants submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, General Counsel, BZX, dated February 10, 2016 ("Exemption Letter").

[28] *See* National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) ("Limit-Up Limit-Down Plan").

[29] Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

Commentary .05 relates to the relevant measurement for purposes of Appendix B.I.a(31)–(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through Commentary .05.[31] This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Commentary .06 addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed.

The Exchange and the other Participants have determined that it is appropriate to include separate categories for these orders types for purposes of Appendix B reporting. The Exchange is therefore proposing Commentary .06 to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included an as order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing Commentary .07 to clarify the scope of the Plan as it relates to Members that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a Member that only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order[32] shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing Commentary .07 to make this clarification.

The Exchange is proposing Commentary .08 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the Member's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its Web site pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.[33]

The Exchange is proposing Commentary .09 to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing Commentary .09 to make this change.[34]

The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis.

Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.[35]

Finally, the Exchange is proposing Commentary .10 to address the securities that will be used for data collection purposes prior to the commencement of the Pilot. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities.

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[30] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

[31] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

[32] The Exchange notes that where a Member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would subject to subject to Appendix B of the Plan.

[33] In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, *e.g.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program). *See also* Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission, dated November 4, 2015 (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation data of the Tick Size Pilot until six months thereafter).

[34] Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

[35] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

The Exchange is therefore proposing Commentary .10 to define "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period.

The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Security.

Implementation Date

The proposed rule change will be effective on April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Section 6(b)(5) of the Act,[37] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act.

The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for Members that operate Trading Centers will apply equally to all such Members, as will the data collection requirements for Market Makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[38] and subparagraph (f)(6) of Rule 19b–4 thereunder.[39]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[40] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[41] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed amendments by April 4, 2016, the date upon which the data collection requirements of the Plan become effective.[42] Therefore, the Commission hereby waives the operative delay and designates the proposal operative on April 4, 2016.[43]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2016–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–BX–2016–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

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[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(3)(a)(iii).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

[42] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

[43] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–019 and should be submitted on or before April 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07334 Filed 3–31–16; 8:45 am]

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[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:

Rule 17a–8. OMB Control No. 3235–0235, SEC File No. 270–225.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 17a–8 (17 CFR 270.17a–8) under the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a) is entitled "Mergers of affiliated companies." Rule 17a–8 exempts certain mergers and similar business combinations ("mergers") of affiliated registered investment companies ("funds") from prohibitions under section 17(a) of the Act (15 U.S.C. 80a–17(a)) on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a–8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 766 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 5,362 hours.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be $15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be $100,000. The Commission staff estimates that each year approximately 0 mergers with unregistered entities occur and approximately 15 funds hold shareholder votes that would not otherwise have held a shareholder vote. The total annual cost burden of meeting these requirements is estimated to be $1,500,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 29, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07355 Filed 3–31–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77458; File No. SR–Phlx–2016–39]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rule 3317 To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

March 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2016, NASDAQ PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Exchange Rule 3317 to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program. The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ BX, Inc., NASDAQ PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program ("Pilot").[6]

The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[7] The Plan[8] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require Members[10] to comply with the applicable data collection requirements of the Plan.[11]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).[12] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments.

Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[16] will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (*e.g.,* transaction costs by order size), execution quality (*e.g.,* speed of order executions), market maker activity, competition between trading venues (*e.g.,* routing frequency of market orders), transparency (*e.g.,* choice between displayed and hidden orders), and market dynamics (*e.g.,* rates and speed of order cancellations).[17]

The Commission also noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.[18]

Compliance With the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.[19] Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers[20] to submit variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, *e.g.*, from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.[21]

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[3] *See* Securities Exchange Act Release No. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (order approving SR–BATS–2015–102); *see also* Securities Exchange Act Release No. 77310 (March 7, 2016), 81 FR 13012 (March 11, 2016) (notice for comment and immediate effectiveness of SR–BATS–2016–27).

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Capitalized terms used in this rule filing are defined in the Plan, unless otherwise specified herein.

[9] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[10] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[11] The Exchange proposes Commentary .11 to Rule 3317 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan.

[14] *See* Section VI(C) of the Plan.

[15] *See* Section VI(D) of the Plan.

[16] 17 CFR 242.611.

[17] *See* Approval Order, 80 FR at 27543.

[18] *Id.*

[19] The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange intends to separately propose rules that would require compliance by its Members with the applicable quoting and trading requirements specified in the Plan, and has reserved Paragraph (a) for such rules.

[20] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system,

Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer ("NBBO") quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority ("DEA") for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

The Exchange is therefore proposing Rule 3317(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Rule 3317(b) is substantially similar to proposed rule changes by BZX that were recently approved or published by the Commission to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[22]

Proposed Rule 3317(b)(1) requires that a Member that operates a Trading Center shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a Member that is a Market Maker shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Proposed Rule 3317(b)(2) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the Member that generated the data.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker[23] engaging in trading activity on a Trading Center operated by the Participant. The Exchange is therefore proposing Rule 3317(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 3317(b)(3)(A) provides that a Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date.

The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T + 4 for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange understands that some Members may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan's data collection requirements. In such case, a DEA that is not a Participant of the Plan would not have an obligation to collect the data required under subparagraph (b)(3)(A) of Rule 3317 and in accordance with Item IV of Appendix B of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 3317 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 3317(b) to FINRA, which is a Participant to the Plan and is to collect data relating to Item IV of Appendix B of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[24]

Proposed Rule 3317(b)(3)(C) provides that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to Rule 3317(b)(3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for

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an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[21] 17 CFR 242.605.

[22] *See supra* note 3.

[23] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[24] FINRA members for which FINRA is their DEA should refer to the Market Maker Transaction Data Technical Specification on the FINRA Web site at *http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs.pdf.*

which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end.

Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Rule 3317(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 3317(b)(4)(A) requires that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center.

The proposed rule also requires Members to provide such data in a format required by their DEA by 12 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

For the same reasons set forth above for subparagraph (b)(3)(B) to Rule 3317, the Exchange proposes to adopt subparagraph (b)(4)(B) to Rule 3317 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 3317(b) to FINRA. As stated above, FINRA is a Participant to the Plan and is to collect data relating to Item I of Appendix C of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[25]

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) Ticker symbol; (ii) the Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers.

Therefore, the Exchange proposes to adopt Rule 3317(b)(5) providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange is also proposing, through Commentary, to clarify other aspects of the data collection requirements.[26] Proposed Commentary .02 relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a "yes/no" field relating to the Retail Investor Order flag. The Exchange is proposing Commentary .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report "y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "n" for all other instances.[27] The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (*i.e.,* Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

Commentary .03 requires that Members populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.[28] Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor ("SIP") calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock's reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (*e.g.,* the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Commentary .03 also requires, for securities that may trade in a foreign market, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) Fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in securities that may trade in a foreign market Pilot and Pre-Pilot Securities as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the member. The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan's quoting and trading requirements, and could otherwise compromise the integrity of the data.

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[25] *Id.*

[26] The Exchange is also proposing Commentary .01 to Rule 3317 to clarify that certain enumerated terms used throughout Rule 3317 shall have the same meaning as set forth in the Plan.

[27] FINRA, on behalf of the Plan Participants submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, General Counsel, BZX, dated February 10, 2016 ("Exemption Letter").

[28] *See* National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) ("Limit-Up Limit-Down Plan").

Commentary .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).[29] The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories. Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.[30]

Commentary .05 relates to the relevant measurement for purposes of Appendix B.I.a(31)–(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through Commentary .05.[31] This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Commentary .06 addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed.

The Exchange and the other Participants have determined that it is appropriate to include separate categories for these orders types for purposes of Appendix B reporting. The Exchange is therefore proposing Commentary .06 to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included an as order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing Commentary .07 to clarify the scope of the Plan as it relates to Members that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a Member that only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order[32] shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing Commentary .07 to make this clarification.

The Exchange is proposing Commentary .08 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the Member's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its Web site pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.[33]

The Exchange is proposing Commentary .09 to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing Commentary .09 to make this change.[34]

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[29] Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

[30] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

[31] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

[32] The Exchange notes that where a Member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would subject to subject to Appendix B of the Plan.

[33] In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, *e.g.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program). *See also* Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission, dated November 4, 2015 (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation data of the Tick Size Pilot until six months thereafter).

The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis.

Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.[35]

Finally, the Exchange is proposing Commentary .10 to address the securities that will be used for data collection purposes prior to the commencement of the Pilot. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities.

The Exchange is therefore proposing Commentary .10 to define "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II, and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period.

The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Security.

Implementation Date

The proposed rule change will be effective on April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Section 6(b)(5) of the Act,[37] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act.

The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for Members that operate Trading Centers will apply equally to all such Members, as will the data collection requirements for Market Makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[38] and subparagraph (f)(6) of Rule 19b–4 thereunder.[39]

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[34] Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

[35] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(3)(a)(iii).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[40] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[41] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed amendments on April 4, 2016, the date upon which the data collection requirements of the Plan become effective.[42] Therefore, the Commission hereby waives the operative delay and designates the proposal operative on April 4, 2016.[43]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–39 and should be submitted on or before April 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Robert W. Errett,

Deputy Secretary.

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change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

[42] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption from Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

[43] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77456; File No. SR–NASDAQ–2016–043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rule 4770 To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

March 28, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to adopt Exchange Rule 4770 to implement the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan"). The proposed rule change is substantially similar to proposed rule changes recently approved or published by the Commission by the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77105 (February 10, 2016), 81 FR 8112 (February 17, 2016) (order approving SR–BATS–2015–102); *see also* Securities Exchange Act Release No. 77310 (March 7, 2016), 81 FR 13012 (March 11, 2016) (notice for comment and immediate effectiveness of SR–BATS–2016–27).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ BX, Inc., NASDAQ PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Participants"), filed with the Commission, pursuant to Section 11A of the Act[4] and Rule 608 of Regulation NMS thereunder,[5] the Plan to Implement a Tick Size Pilot Program ("Pilot").[6]

The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[7] The Plan[8] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[9]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require Members[10] to comply with the applicable data collection requirements of the Plan.[11]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each (selected by a stratified random sampling process).[12] During the pilot, Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments.

Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[15] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[16] will apply to the Trade-at requirement.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (*e.g.,* transaction costs by order size), execution quality (*e.g.,* speed of order executions), market maker activity, competition between trading venues (*e.g.,* routing frequency of market orders), transparency (*e.g.,* choice between displayed and hidden orders), and market dynamics (*e.g.,* rates and speed of order cancellations).[17]

The Commission also noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.[18]

Compliance With the Data Collection Requirements of the Plan

The Plan contains requirements for collecting and transmitting data to the Commission and to the public.[19] Specifically, Appendix B.I of the Plan (Market Quality Statistics) requires Trading Centers[20] to submit variety of market quality statistics, including information about an order's original size, whether the order was displayable or not, the cumulative number of orders, the cumulative number of shares of orders, and the cumulative number of shares executed within specific time increments, *e.g.,* from 30 seconds to less than 60 seconds after the time of order receipt. This information shall be categorized by security, order type, original order size, hidden status, and coverage under Rule 605.[21] Appendix B.I of the Plan also contains additional requirements for market orders and marketable limit orders, including the share-weighted average effective spread for executions of orders; the cumulative number of shares of orders executed with price improvement; and, for shares executed with price improvement, the share-weighted average amount per share that prices were improved.

Appendix B.II of the Plan (Market and Marketable Limit Order Data) requires Trading Centers to submit information relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, the National Best Bid and National Best Offer ("NBBO") quoted price, the NBBO quoted depth, the average execution price-share-weighted average, and the average execution time-share-weighted average.

The Plan requires Appendix B.I and B.II data to be submitted by Participants that operate a Trading Center, and by members of the Participants that operate Trading Centers. The Plan provides that each Participant that is the Designated Examining Authority ("DEA") for a member of the Participant that operates a Trading Center shall collect such data in a pipe delimited format, beginning six months prior to the Pilot Period and ending six months after the end of the Pilot Period. The Plan also requires the Participant, operating as DEA, to transmit this information to the SEC within 30 calendar days following month end.

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[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[7] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[8] Capitalized terms used in this rule filing are defined in the Plan, unless otherwise specified herein.

[9] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

[10] The term "Member" or "Nasdaq Member" is defined as "any registered broker or dealer that has been admitted to membership in Nasdaq. A Nasdaq Member is not a member of Nasdaq within the meaning of the Delaware Limited Liability Company Act by reason of being admitted to membership in Nasdaq." *See* Exchange Rule 0120(i).

[11] The Exchange proposes Commentary .11 to Rule 4770 to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan.

[14] *See* Section VI(C) of the Plan.

[15] *See* Section VI(D) of the Plan.

[16] 17 CFR 242.611.

[17] *See* Approval Order, 80 FR at 27543.

[18] *Id.*

[19] The Exchange is also required by the Plan to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan. The Exchange intends to separately propose rules that would require compliance by its Members with the applicable quoting and trading requirements specified in the Plan, and has reserved Paragraph (a) for such rules.

[20] The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.600(b).

[21] 17 CFR 242.605.

The Exchange is therefore proposing Rule 4770(b) to set forth the requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan. Proposed Rule 4770(b) is substantially similar to proposed rule changes by BZX that were recently approved or published by the Commission to adopt BZX Rule 11.27(b) which also sets forth requirements for the collection and transmission of data pursuant to Appendices B and C of the Plan.[22]

Proposed Rule 4770(b)(1) requires that a Member that operates a Trading Center shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II to Appendix B of the Plan, and a Member that is a Market Maker shall establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

Proposed Rule 4770(b)(2) provides that the Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for: (i) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange Web site on a monthly basis at no charge and will not identify the Member that generated the data.

Appendix B.IV (Daily Market Maker Participation Statistics) requires a Participant to collect data related to Market Maker participation from each Market Maker[23] engaging in trading activity on a Trading Center operated by the Participant. The Exchange is therefore proposing Rule 4770(b)(3) to gather data about a Market Maker's participation in Pilot Securities and Pre-Pilot Data Collection Securities. Proposed Rule 4770(b)(3)(A) provides that a Member that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan with respect to activity conducted on any Trading Center in Pilot Securities and Pre-Pilot Data Collection Securities in furtherance of its status as a registered Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date.

The proposed rule requires Market Makers to transmit such data in a format required by their DEA, by 12:00 p.m. EST on T+4 for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) for transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange understands that some Members may utilize a DEA that is not a Participant to the Plan and that their DEA would not be subject to the Plan's data collection requirements. In such case, a DEA that is not a Participant of the Plan would not have an obligation to collect the data required under subparagraph (b)(3)(A) of Rule 4770 and in accordance with Item IV of Appendix B of the Plan. Therefore, the Exchange proposes to adopt subparagraph (b)(3)(B) to Rule 4770 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (3)(A) of Rule 4770(b) to FINRA, which is a Participant to the Plan and is to collect data relating to Item IV of Appendix B of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[24]

Proposed Rule 4770(b)(3)(C) provides that the Exchange shall transmit the data collected by the DEA or FINRA pursuant to Rule 4770(b)(3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange Web site on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Appendix C.I (Market Maker Profitability) requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Specifically, the Participant is required to collect the total number of shares of orders executed by the Market Maker; the raw Market Maker realized trading profits, and the raw Market Maker unrealized trading profits. Data shall be collected for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. This data shall be collected on a monthly basis, to be provided in a pipe delimited format to the Participant, as DEA, within 30 calendar days following month end.

Appendix C.II (Aggregated Market Maker Profitability) requires the Participant, as DEA, to aggregate the Appendix C.I data, and to categorize this data by security as well as by the control group and each Test Group. That aggregated data shall contain information relating to total raw Market Maker realized trading profits, volume-weighted average of raw Market Maker realized trading profits, the total raw Market Maker unrealized trading profits, and the volume-weighted average of Market Maker unrealized trading profits.

The Exchange is therefore proposing Rule 4770(b)(4) to set forth the requirements for the collection and transmission of data pursuant to Appendix C.I of the Plan. Proposed Rule 4770(b)(4)(A) requires that a Member that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions in Pilot Securities that have settled or reached settlement date that were executed on any Trading Center.

The proposed rule also requires Members to provide such data in a format required by their DEA by 12 p.m.

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[22] *See supra* note 3.

[23] The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

[24] FINRA members for which FINRA is their DEA should refer to the Market Maker Transaction Data Technical Specification on the FINRA Web site at *http://www.finra.org/sites/default/files/market-maker-transaction-data-tech-specs.pdf.*

EST on T+4 for executions during and outside of Regular Trading Hours in each: (i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

For the same reasons set forth above for subparagraph (b)(3)(B) to Rule 4770, the Exchange proposes to adopt subparagraph (b)(4)(B) to Rule 4770 to require a Member that is a Market Maker whose DEA is not a Participant to the Plan to transmit the data collected pursuant to paragraph (4)(A) of Rule 4770(b) to FINRA. As stated above, FINRA is a Participant to the Plan and is to collect data relating to Item I of Appendix C of the Plan on behalf of the Participants. For Market Makers for which it is the DEA, FINRA issued a Market Maker Transaction Data Technical Specification to collect data on Pre-Pilot Data Collection Securities and Pilot Securities from Trading Centers to comply with the Plan's data collection requirements.[25]

The Exchange is also adopting a rule setting forth the manner in which Market Maker participation will be calculated. Item III of Appendix B of the Plan requires each Participant that is a national securities exchange to collect daily Market Maker registration statistics categorized by security, including the following information: (i) Ticker symbol; (ii) the Participant exchange; (iii) number of registered market makers; and (iv) the number of other registered liquidity providers.

Therefore, the Exchange proposes to adopt Rule 4770(b)(5) providing that the Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for: (i) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and (ii) transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange is also proposing, through Commentary, to clarify other aspects of the data collection requirements.[26] Proposed Commentary .02 relates to the use of the retail investor order flag for purposes of Appendix B.II(n) reporting. The Plan currently states that market and marketable limit orders shall include a "yes/no" field relating to the Retail Investor Order flag. The Exchange is proposing Commentary .02 to clarify that, for purposes of the reporting requirement in Appendix B.II(n), a Trading Center shall report "y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "n" for all other instances.[27] The Exchange believes that requiring the identification of a Retail Investor Orders only where the exception may apply (*i.e.*, Pilot Securities in Test Groups Two and Three) is consistent with Appendix B.II(n).

Commentary .03 requires that Members populate a field to identify to their DEA whether an order is affected by the bands in place pursuant to the National Market System Plan to Address Extraordinary Market Volatility.[28] Pursuant to the Limit-Up Limit-Down Plan, between 9:30 a.m. and 4:00 p.m., the Securities Information Processor ("SIP") calculates a lower price band and an upper price band for each NMS stock. These price bands represent a specified percentage above or below the stock's reference price, which generally is calculated based on reported transactions in that stock over the preceding five minutes. When one side of the market for an individual security is outside the applicable price band, the SIP identifies that quotation as non-executable. When the other side of the market reaches the applicable price band (*e.g.*, the offer reaches the lower price band), the security enters a Limit State. The stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the security does not exit a Limit State within 15 seconds, then the primary listing exchange declares a five-minute trading pause, which would be applicable to all markets trading the security.

The Exchange and the other Participants have determined that it is appropriate to create a new flag for reporting orders that are affected by the Limit-Up Limit-Down bands. Accordingly, a Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the Limit-Up Limit-Down bands in effect at the time of order receipt.

Commentary .03 also requires, for securities that may trade in a foreign market, that the Participant indicate whether the order was handled domestically, or routed to a foreign venue. Accordingly, the Participant will indicate, for purposes of Appendix B.I, whether the order was: (1) Fully executed domestically, or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participant will classify all orders in securities that may trade in a foreign market Pilot and Pre-Pilot Securities as: (1) Directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) was fully or partially directed to a foreign venue at the discretion of the member. The Exchange believes that this proposed flag will better identify orders in securities that may trade in a foreign market, as such orders that were routed to foreign venues would not be subject to the Plan's quoting and trading requirements, and could otherwise compromise the integrity of the data.

Commentary .04 relates to the time ranges specified in Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22).[29] The Exchange and the other Participants have determined that it is appropriate to change the reporting times in these provisions to require more granular reporting for these categories.

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[25] *Id.*

[26] The Exchange is also proposing Commentary .01 to Rule 4770 to clarify that certain enumerated terms used throughout Rule 4770 shall have the same meaning as set forth in the Plan.

[27] FINRA, on behalf of the Plan Participants submitted a letter to Commission requesting exemption from certain provisions of the Plan related to data collection. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA dated December 9, 2015 to Robert W. Errett, Deputy Secretary, Commission ("Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, General Counsel, BZX, dated February 10, 2016 ("Exemption Letter").

[28] *See* National Market System Plan to Address Extraordinary Market Volatility, Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) ("Limit-Up Limit-Down Plan").

[29] Specifically, Appendix B.I.a(14) requires reporting of the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt; Appendix B.I.a(15) requires reporting of the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt; Appendix B.I.a(21) requires reporting of the cumulative number of shares of orders cancelled from 0 to less than 100 microseconds after the time of order receipt; and Appendix B.I.a(22) requires reporting of the cumulative number of shares of orders cancelled from 100 microseconds to less than 100 milliseconds after the time of order receipt.

Accordingly, the Exchange proposes to add Appendix B.I.a(14A), which will require Trading Centers to report the cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(15) will be changed to require the cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange also proposes to add Appendix B.I.a(21A), which will require Trading Centers to report the cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt. Appendix B.I.a(22) will be changed to require the cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt. The Exchange believes that these new reporting requirements will contribute to a meaningful analysis of the Pilot by producing more granular data on these points.[30]

Commentary .05 relates to the relevant measurement for purposes of Appendix B.I.a(31)-(33) reporting. Currently, the Plan states that this data shall be reported as of the time of order execution. The Exchange and the other Participants believe that this information should more properly be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent with the goal of observing the effect of the Pilot on the liquidity of Pilot Securities. The Exchange is therefore proposing to make this change through Commentary .05.[31] This change will make these provisions consistent with the remainder of the statistics in Appendix B.I.a, which are all based on order receipt.

Commentary .06 addresses the status of not-held and auction orders for purposes of Appendix B.I reporting. Currently, Appendix B.I sets forth eight categories of orders, including market orders, marketable limit orders, and inside-the-quote resting limit orders, for which daily market quality statistics must be reported. Currently, Appendix B.I does not provide a category for not held orders, clean cross orders, auction orders, or orders received when the NBBO is crossed.

The Exchange and the other Participants have determined that it is appropriate to include separate categories for these orders types for purposes of Appendix B reporting. The Exchange is therefore proposing Commentary .06 to provide that not held orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (18). Clean cross orders shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (19); auction orders shall be included an as order type for purposes of Appendix B reporting, and shall be assigned the number (20); and orders that cannot otherwise be classified, including, for example, orders received when the NBBO is crossed shall be included as an order type for purposes of Appendix B reporting, and shall be assigned the number (21). All of these orders already are included in the scope of Appendix B; however, without this proposed change, these order types would be categorized with other orders, such as regular held orders, that should be able to be fully executed upon receipt, which would compromise the value of this data.

The Exchange is proposing Commentary .07 to clarify the scope of the Plan as it relates to Members that only execute orders limited purposes. Specifically, The Exchange and the other Participants believe that a Member that only executes orders otherwise than on a national securities exchange for the purpose of: (1) Correcting a bona fide error related to the execution of a customer order; (2) purchasing a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (3) completing the fractional share portion of an order[32] shall not be deemed a Trading Center for purposes of Appendix B to the Plan. The Exchange is therefore proposing Commentary .07 to make this clarification.

The Exchange is proposing Commentary .08 to clarify that, for purposes of the Plan, Trading Centers must begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. While the Exchange or the Member's DEA will provide the information required by Appendix B and C of the Plan during the Pilot Period, the requirement that the Exchange or their DEA provide information to the SEC within 30 days following month end and make such data publicly available on its Web site pursuant to Appendix B and C shall commence six months prior to the beginning of the Pilot Period.[33]

The Exchange is proposing Commentary .09 to address the requirement in Appendix C.I(b) of the Plan that the calculation of raw Market Maker realized trading profits utilize a last in, first out ("LIFO")-like method to determine which share prices shall be used in that calculation. The Exchange and the other Participants believe that it is more appropriate to utilize a methodology that yields LIFO-like results, rather than utilizing a LIFO-like method, and the Exchange is therefore proposing Commentary .09 to make this change.[34]

The Exchange is proposing that, for purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily LIFO basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis.

Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In reporting unrealized trading profits, the Participant shall also report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.[35]

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[30] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

[31] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

[32] The Exchange notes that where a Member purchases a fractional share from a customer, the Trading Center that executes the remaining whole shares of that customer order would subject to subject to Appendix B of the Plan.

[33] In its order approving the Plan, the SEC noted that the Pilot shall be implemented within one year of the date of publication of its order, *e.g.*, by May 6, 2016. *See* Approval Order, 80 FR at 27545. However, on November 6, 2015, the SEC extended the implementation date approximately five months to October 3, 2016. *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption From Compliance With the National Market System Plan To Implement a Tick Size Pilot Program). *See also* Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission, dated November 4, 2015 (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation data of the Tick Size Pilot until six months thereafter).

[34] Appendix C.I currently requires Market Maker profitability statistics to include (1) the total number of shares of orders executed by the Market Maker; (2) raw Market Maker realized trading profits, which is the difference between the market value of Market Maker shares and the market value of Market Maker purchases, using a LIFO-like method; and (3) raw Market Maker unrealized trading profits, which is the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted; in the case of a long position, the purchase price will be subtracted from the Closing Price.

Finally, the Exchange is proposing Commentary .10 to address the securities that will be used for data collection purposes prior to the commencement of the Pilot. The Exchange and the other Participants have determined that it is appropriate to collect data for a group of securities that is larger, and using different quantitative thresholds, than the group of securities that will be Pilot Securities.

The Exchange is therefore proposing Commentary .10 to define "Pre-Pilot Data Collection Securities" as the securities designated by the Participants for purposes of the data collection requirements described in Items I, II, and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period and ending on the trading day immediately preceding the Pilot Period.

The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of $5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of $1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period. On the trading day that is the first trading day of the Pilot Period through six months after the end of the Pilot Period, the data collection requirements will become applicable to the Pilot Securities only. A Pilot Security will only be eligible to be included in a Test Group if it was a Pre-Pilot Security.

Implementation Date

The proposed rule change will be effective on April 4, 2016.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Section 6(b)(5) of the Act,[37] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements and clarifies the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act.

The Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act because the proposal implements and clarifies the requirements of the Plan and applies specific obligations to Members in furtherance of compliance with the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant of the Plan. The Exchange also notes that the data collection requirements for Members that operate Trading Centers will apply equally to all such Members, as will the data collection requirements for Market Makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[38] and subparagraph (f)(6) of Rule 19b–4 thereunder.[39]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[40] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[41] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed amendments on April 4, 2016, the date upon which the data collection requirements of the Plan become effective.[42] Therefore, the Commission hereby waives the operative delay and designates the proposal operative on April 4, 2016.[43]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[35] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* Exemption Letter, *supra* note 27.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] 15 U.S.C. 78s(b)(3)(a)(iii).

[39] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[40] 17 CFR 240.19b–4(f)(6).

[41] 17 CFR 240.19b–4(f)(6)(iii).

[42] *See* Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (File No. 4–657) (Order Granting Exemption from Compliance With the National Market System Plan To Implement a Tick Size Pilot Program).

[43] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–043 and should be submitted on or before April 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07333 Filed 3–31–16; 8:45 am]

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[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0217, SEC File No. 270–224]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Rule 17e–1.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("Paperwork Reduction Act"), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information described below.

Rule 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the "Investment Company Act") deems a remuneration as "not exceeding the usual and customary broker's commission" for purposes of Section 17(e)(2)(A) if, among other things, a registered investment company's ("fund's") board of directors has adopted procedures reasonably designed to provide that the remuneration to an affiliated broker is a reasonable and fair amount compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary. In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures. Rule 17e–1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of each transaction subject to the rule, setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. The recordkeeping requirements under rule 17e–1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker's commission. Without the recordkeeping requirements, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e–1.

Based on an analysis of fund filings, the staff estimates that approximately 320 funds enter into subadvisory agreements each year.[1] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e–1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3–1, 10f–3, and 17a–10, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 17e–1 for this contract change would be 0.75 hours.[2] Assuming that all 320 funds enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 240 burden hours annually.[3]

Based on an analysis of fund filings, we estimate that approximately 1,696 funds use at least one affiliated broker. Based on staff experience and conversations with fund representatives, the staff estimates approximately 40 percent of transactions (and thus, 40% of funds) that occur under the rule 17e–

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[1] Based on data from Morningstar, as of September, 2015, there are 12,426 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,683 funds of which have subadvisory relationships (approximately 38%). Based on data from the 2015 ICI Factbook, 843 new funds were established in 2014 (654 open-end funds + 176 exchange-traded funds + 13 closed-end funds (from the ICI Research Perspective, April 2015)). 843 new funds × 38% = 320 funds.

[2] 3 hours + 4 rules = 0.75 hours.

[3] This estimate is based on the following calculation: 0.75 hours × 320 funds = 240 burden hours.

1 would be exempt from its recordkeeping and review requirements. This would leave approximately 1,018 funds[4] still subject to the rule's recordkeeping and review requirements. Based on staff experience and conversations with fund representatives, we estimate that the burden of compliance with rule 17e–1 is approximately 50 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e–1 to be approximately 50,900 hours,[5] and the total annual burden of the rule's paperwork requirements is 51,140 hours.[6]

Estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 17e–1 is mandatory. The information provided under rule 17e–1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 29, 2016.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–07356 Filed 3–31–16; 8:45 am]

BILLING CODE 8011–01–P

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[4] 1,696 funds × 0.6 = 1,018 funds.

[5] 1,018 funds × 50 hours per fund = 50,900 hours.

[6] 240 hours + 50,900 hours = 51,140 hours.

DEPARTMENT OF STATE

[Public Notice: 9506]

In the Matter of the Review of the Designation of Ansar al Islam (and other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register.**

John F. Kerry,

Secretary of State, Department of State.

[FR Doc. 2016–07432 Filed 3–31–16; 8:45 am]

BILLING CODE 4710–AD–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36013]

Southern Switching Company—Operation Exemption—Lone Star Railroad, Inc.

Southern Switching Company (SSC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 3.18 miles of rail line at an industrial park near Big Springs, in Howard County, Tex. (the Line), pursuant to an operating agreement with its sister rail carrier, Lone Star Railroad, Inc. (LSR), the owner of the Line.[1] There are no mileposts on the Line.[2]

According to SSC, the Line connects with a rail line owned and operated by Union Pacific Railroad Company between Dallas and El Paso, Tex.

SSC states that the agreement regarding the subject line does not involve an interchange commitment. SSC also states that its projected annual revenues as a result of this transaction do not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

The transaction may be consummated on or after April 16, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than April 8, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36013, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on applicant's representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604.

According to SSC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: March 25, 2016.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–07366 Filed 3–31–16; 8:45 am]

BILLING CODE 4915–01–P

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[1] LSR is a wholly owned subsidiary of CGX, Inc. (CGX). SSC is a wholly owned subsidiary of Ironhorse Resources, Inc. (Ironhorse), which is a wholly owned subsidiary of CGX. Ironhorse and CGX are holding companies.

[2] LSR and SSC initially filed a joint petition for exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for LSR to construct, and of § 10902 for SSC to operate, the new 3.18-mile line of railroad. The Board granted the petition as it pertained to construction of the new line but denied it with respect to SSC's operation of the Line because the record did not support the authority requested. That denial was without prejudice to SSC's submitting either a properly supported petition for exemption from § 10902 or a verified notice of exemption pursuant to 49 CFR 1150.41. *See Lone Star R.R.—Track Constr. & Operation Exemption—in Howard Cty., Tex.,* FD 35874 (STB served March 3, 2016). SSC's verified notice here seeks the operating authority that was denied in that case.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of the Research, Engineering & Development Advisory Committee meeting.

DATES: The meeting will be held on April 20, 2016—9:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW., Round Room (10th Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Chinita A. Roundtree-Coleman at (609) 485–7149 or Web site at *chinita.roundtree-coleman@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Research, Engineering and Development (RE&D) Advisory Committee. The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to attend the meeting, present statements, or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on March 21, 2016.

Chinita A. Roundtree-Coleman,

Computer Specialist.

[FR Doc. 2016–07400 Filed 3–31–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Idaho

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, US–95 Thorncreek Road to Moscow in the County of Latah in the State of Idaho, FHWA Project # DHP–NH–4110(156); Idaho Transportation Department (ITD) Key #9294.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 29, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA, contact Kyle Holman, Operations Engineer, FHWA Idaho Division, 3050 Lakeharbor Lane #126, Boise, ID 83703, telephone 208–334–9180, extension 127, or via email at *kyle.holman@dot.gov.* Regular office hours are from 7:00 a.m. to 4:00 p.m., m.t., Monday through Friday, except Federal holidays. For ITD, contact Ken Helm, ITD Project Manager, P.O. Box 837, Lewiston, ID 83501, telephone 208–799–5090, or via email at *ken.helm@itd.idaho.gov.* Regular office hours are from 8:00 a.m. to 5:00 p.m., p.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency actions by issuing approvals for the following highway project in the State of Idaho: US–95 Thorncreek Road to Moscow Project No. DHP–NH–4110 (156), Latah County. The project involves improvements and realignment to section of US–95. The highway will be improved from milepost 337.67 to milepost 344.00 to improve safety and capacity of this section of US–95. The existing two-lane undivided highway from Thorncreek Road to the South Fork Palouse River Bridge will be replaced with a four-lane divided highway with a 34-foot median through the majority of the corridor. A four-lane highway with center turn lane, curb, gutter and sidewalk will be constructed at the northern end of the project. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) and Final Section 4(f) Evaluation US–95 Thorncreek Road to Moscow (FHWA–ID–EIS–12–01–F) for the project, approved on July 28, 2015, in the FHWA Record of Decision (ROD) issued on March 21, 2016, and in other documents in the project records. The FEIS, ROD, and other project records are available by contacting FHWA or the ITD using the contact information provided above. The FEIS and ROD can be viewed and downloaded from the project Web site at *http://US95Thorncreek.com.* Select the link labelled "ROD" near the top of the page. Otherwise, a copy can be viewed or obtained by contacting FHWA or ITD as provided above.

This notice applies to all FHWA decisions that are final as of the issuance date of this notice and all laws and regulations under which such actions were taken, including but not limited to the following;

1. General: National Environmental Policy Act (42 U.S.C. 4321–4370h); Federal-Aid Highway Act (23 U.S.C. 109); and associated regulations (23 CFR).
2. Social and Economic: American Indian Religious Freedom Act (42 U.S.C. 1996); Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 61); and the Civil Rights Act of 1964 (42 U.S.C. 2000(d)–2000(d)(1)).
3. Air: Clean Air Act (42 U.S.C. 7401–7671q) (transportation conformity).
4. Hazardous Materials: Toxic Substances Control Act (15 U.S.C. 2601–2629); Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9675); and the Resource Conservation and Recovery Act (42 U.S.C. 6901–6992(k)).
5. Land: Farmland Protection Policy Act (7 U.S.C. 4201–4209); Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303); and the Highway Beautification Act of 1965 (23 U.S.C. 131).
6. Wildlife: Endangered Species Act (16 U.S.C. 1531–1544); Fish and Wildlife Coordination Act (16 U.S.C. 661–667(e)); Migratory Bird Treaty Act (16 U.S.C. 703–712); National Forest Management Act (16 U.S.C. 1600–1687); and the Federal Noxious Weed Act of 1974 (7 U.S.C. 2801 *et seq.*).
7. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108); Archeological Resources Protection Act of 1977 (16 U.S.C. 470aa–470mm); Archeological and Historic Preservation Act (16 U.S.C. 469–469c–2); and the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001–3013).
8. Wetlands and Water Resources: Clean Water Act (Sections 319, 401, and 404 404 (33 U.S.C. 1251–1387)); Safe

Drinking Water Act (42 U.S.C. 300); Rivers and Harbors Act of 1899 (33 U.S.C. 401–406); and the National Flood Insurance Act of 1968 and Flood Disaster Protection Act (42 U.S.C. 4012a, 4106);

9. Executive Orders (E.O.): E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 11514, Protection and Enhancement of Environmental Quality; and E.O. 13112, Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O.12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 (l)(1).

Issued on: March 25, 2016.

Peter J. Hartman,

FHWA Idaho Division Administrator, Boise, Idaho.

[FR Doc. 2016–07412 Filed 3–31–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0035]

Revision of the Emergency Medical Services Agenda for the Future; Request for Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice; request for information.

SUMMARY: NHTSA, on behalf of the Federal Interagency Committee on Emergency Medical Services (FICEMS), is seeking comments from all sources (public, private, governmental, academic, professional, public interest groups, and other interested parties) on the planned revision of the 1996 *Emergency Medical Services Agenda for the Future* (EMS Agenda).

FICEMS was created (42 U.S.C. 300d–4) by the Secretaries of Transportation, Health and Human Services and Homeland Security to, in part, ensure coordination among the Federal agencies involved with State, local, tribal or regional emergency medical services and 9–1–1 systems. FICEMS has statutory authority to identify State and local Emergency Medical Services (EMS) and 9–1–1 needs, to recommend new or expanded programs and to identify the ways in which Federal agencies can streamline their processes for support of EMS. FICEMS includes representatives from the Department of Defense (DoD) Office of the Assistant Secretary of Defense—Health Affairs, the Department of Health and Human Services (HHS) Office of the Assistant Secretary for Preparedness and Response (ASPR), HHS Indian Health Service (IHS), HHS Centers for Disease Control and Prevention (CDC), HHS Health Resources and Services Administration (HRSA), HHS Centers for Medicare and Medicaid Services (CMS), the Department of Homeland Security (DHS) Office of Health Affairs (OHA), DHS U.S. Fire Administration (USFA), NHTSA, the Federal Communications Commission (FCC) and a State EMS Director appointed by the Secretary of Transportation.

On June 19, 2014, FICEMS unanimously approved a motion to proceed with a revision of the EMS Agenda, with a focus on data-driven approaches to future improvements.

This followed an April 24, 2014 letter in which the National Emergency Medical Services Advisory Council (NEMSAC) issued recommendations to NHTSA regarding revision of the EMS Agenda. NEMSAC's recommendations were as follows:

- A major revision of the *EMS Agenda for the Future* should be undertaken as soon as possible;
- The revision process should be guided by an external entity (not NEMSAC) that will ensure a consensus- and data-driven process with broad stakeholder representation. The goal should be to replicate the process used to develop the original EMS Agenda for the Future, published in 1996;
- The U.S. Department of Transportation should seek financial support and assistance from members of FICEMS to accomplish this task.

The purpose of this notice is to solicit comments on the planned revision of the EMS Agenda, and to request responses to specific questions provided below. This is neither a request for proposals nor an invitation for bids.

DATES: It is requested that comments on this announcement be submitted by June 30, 2016.

ADDRESSES: You may submit comments [identified by Docket No. NHTSA–2016–0035] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gamunu Wijetunge, Office of Emergency Medical Services, (202) 493–2793, *gamunu.wijetunge@dot.gov,* located at the United States Department of Transportation; 1200 New Jersey Avenue SE., NPD–400, Room W44–232, Washington, DC 20590. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In 1996 NHTSA, in partnership with HRSA, published the EMS Agenda (*www.ems.gov/pdf/2010/EMSAgendaWeb_7-06-10.pdf*). The document created a vision for the future of EMS systems in the United States and led to EMS system improvements across the Nation. Changes envisioned by the EMS Agenda included the National EMS Information System (NEMSIS), the "EMS Education Agenda for the Future: A Systems Approach", universal wireless 9–1–1, automatic crash notification, the recognition of EMS as a physician sub-specialty, and many others.

The EMS Agenda included the following vision statement: "Emergency medical services (EMS) of the future will be community-based health management that is fully integrated with the overall health care system. It will have the ability to identify and modify illness and injury risks, provide acute illness and injury care and follow-up, and contribute to treatment of chronic conditions and community health monitoring. This new entity will be developed from redistribution of existing health care resources and will be integrated with other health care providers and public health and public safety agencies. It will improve community health and result in more appropriate use of acute health care resources. EMS will remain the public's emergency medical safety net."

Furthermore, the EMS Agenda proposed development of the following 14 EMS attributes:

- Integration of Health Services;
- EMS Research;
- Legislation and Regulation;
- System Finance;
- Human Resources;

- Medical Direction;
- Education Systems;
- Public Education;
- Prevention;
- Public Access;
- Communication Systems;
- Clinical Care;
- Information Systems;
- Evaluation.

In 2014, NEMSAC recommended that NHTSA undertake a major revision of the EMS Agenda. NHTSA, on behalf of FICEMS, intends to work closely with EMS stakeholders in revising the EMS Agenda. It is anticipated the revised EMS Agenda will envision the evolution of EMS systems over the next 30 years.

Questions on the Proposed Revision of the EMS Agenda

Responses to the following questions are requested to help plan the revision of the EMS Agenda. Please provide references as appropriate.

1. What are the most critical issues facing EMS systems that should be addressed in the revision of the EMS Agenda? Please be as specific as possible.

2. What progress has been made in implementing the EMS Agenda since its publication in 1996?

3. How have you used the EMS Agenda? Please provide specific examples.

4. As an EMS stakeholder, how might the revised EMS Agenda be most useful to you?

5. What significant changes have occurred in EMS systems at the national, State and local levels since 1996?

6. What significant changes will impact EMS systems over the next 30 years?

7. How might the revised EMS Agenda support the following FICEMS Strategic Plan goals:

a. Coordinated, regionalized, and accountable EMS and 9–1–1 systems that provide safe, high-quality care;

b. data-driven and evidence-based EMS systems that promote improved patient care quality;

c. EMS systems fully integrated into State, territorial, local, tribal, regional, and Federal preparedness planning, response, and recovery;

d. EMS systems that are sustainable, forward looking, and integrated with the evolving health care system;

e. an EMS culture in which safety considerations for patients, providers, and the community permeate the full spectrum of activities; and

f. a well-educated and uniformly credentialed EMS workforce.

8. How could the revised EMS Agenda contribute to enhanced emergency medical services for children?

9. How could the revised EMS Agenda address the future of EMS data collection and information sharing?

10. How could the revised EMS Agenda support data-driven and evidence-based improvements in EMS systems?

11. How could the revised EMS Agenda enhance collaboration among EMS systems, health care providers, hospitals, public safety answering points, public health, insurers, palliative care and others?

12. How will innovative patient care delivery and finance models impact EMS systems over the next 30 years?

13. How could the revised EMS Agenda promote community preparedness and resilience?

14. How could the revised EMS Agenda contribute to improved coordination for mass casualty incident preparedness and response?

15. How could the revised EMS Agenda enhance the exchange of evidence based practices between military and civilian medicine?

16. How could the revised EMS Agenda support the seamless and unimpeded transfer of military EMS personnel to roles as civilian EMS providers?

17. How could the revised EMS Agenda support interstate credentialing of EMS personnel?

18. How could the revised EMS Agenda support improved patient outcomes in rural and frontier communities?

19. How could the revised EMS Agenda contribute to improved EMS education systems at the local, State, and national levels?

20. How could the revised EMS Agenda lead to improved EMS systems in tribal communities?

21. How could the revised EMS Agenda promote a culture of safety among EMS personnel, agencies and organizations?

22. Are there additional EMS attributes that should be included in the revised EMS Agenda? If so, please provide an explanation for why these additional EMS attributes should be included.

23. Are there EMS attributes in the EMS Agenda that should be eliminated from the revised edition? If so, please provide an explanation for why these EMS attributes should be eliminated.

24. What are your suggestions for the process that should be used in revising the EMS Agenda?

25. What specific agencies/organizations/entities are essential to involve, in a revision of the EMS Agenda?

26. Do you have any additional comments regarding the revision of the EMS Agenda?

Issued on: March 22, 2016.

Jeffrey P. Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2016–06960 Filed 3–31–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0040]

Request for Public Comments on NHTSA Enforcement Guidance Bulletin 2016–02: Safety-Related Defects and Emerging Automotive Technologies

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comments.

SUMMARY: Automotive technology is at a moment of rapid change and may evolve farther in the next decade than in the previous 45-plus year history of the Agency. As the world moves toward autonomous vehicles and innovative mobility solutions, NHTSA is interested in facilitating the rapid advance of technologies that will promote safety. NHTSA is commanded by Congress to protect the safety of the driving public against unreasonable risks of harm that may occur because of the design, construction, or performance of a motor vehicle or motor vehicle equipment, and mitigate risks of harm, including risks that may be emerging or contingent. As NHTSA always has done when evaluating new technologies and solutions, we will be guided by our statutory mission, the laws we are obligated to enforce, and the benefits of the emerging technologies appearing on America's roadways.

NHTSA has broad enforcement authority, under existing statutes and regulations, to address existing and emerging automotive technologies. This proposed Enforcement Guidance Bulletin sets forth NHTSA's current views on emerging automotive technologies—including its view that when vulnerabilities of such technology or equipment pose an unreasonable risk to safety, those vulnerabilities constitute a safety-related defect—and suggests guiding principles and best practices for motor vehicle and equipment manufacturers in this context. This notice solicits comments from the public, motor vehicle and equipment manufacturers, and other interested

parties concerning the proposed guidance for motor vehicle and equipment manufacturers in developing and implementing new and emerging automotive technologies, safety compliance programs, and other business practices in connection with such technologies.

DATES: Comments must be received on or before May 2, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Internet:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.
- *Facsimile:* (202) 493–2251.

Regardless of how you submit your comments, please mention the docket number of this document.

You may also call the Docket at (202) 366–9322.

Instructions: All comments received must include the Agency name and docket ID. Please submit your comments by only one means. Regardless of the method used for submitting comments, all submissions will be posted without change to *http://www.regulations.gov,* including any personal information provided. Thus, submitting such information makes it public. You may wish to read the Privacy Act notice, which can be viewed by clicking on the "Privacy and Security Notice" link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Justine Casselle, Office of the Chief Counsel, National Highway Traffic Safety Administration, or Elizabeth Mykytiuk, Office of the Chief Counsel, National Highway Traffic Safety Administration, at (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Executive Summary
II. Legal and Policy Background
  A. NHTSA's Enforcement Authority Under the Safety Act
  B. Determining the Existence of a Defect
  C. Determining an Unreasonable Risk to Safety
III. Guidance and Recommended Best Practices: Safety-Related Defects, Unreasonable Risk, and Emerging Technologies

I. Executive Summary

Recent and continuing advances in automotive technology have great potential to generate significant safety benefits. Today's motor vehicles are increasingly equipped with electronics, sensors, and computing power that enable the deployment of safety technologies and functions, such as forward-collision warning, automatic-emergency braking, and lane keeping assist, which dramatically enhance safety. New technologies may not only prevent drivers from crashing, but may even do some or all of the driving for them. The safety implications of such emerging technologies are vast. Importantly, as these technologies become more widespread, manufacturers must ensure their safe development and implementation.

To facilitate automotive safety innovation, to aid in the successful development and deployment of emerging automotive technologies, and to protect the public from potential flaws or threats associated with emerging automotive technologies, NHTSA is publishing, for guidance and informational purposes, this Enforcement Guidance Bulletin setting forth the Agency's current view of its enforcement authority and principles guiding its exercise of that authority. This includes guiding principles and best practices for use by motor vehicle and equipment manufacturers. NHTSA is not establishing a binding set of rules, nor is the Agency suggesting that one particular set of practices applies in all situations. The Agency recognizes that best practices vary depending on circumstances, and manufacturers remain free to choose the solution that best fits their needs and the demands of automotive safety. However, to address safety concerns associated with emerging technologies in a comprehensive way, and to advise regulated entities of the Agency's present views of certain enforcement subjects and issues, NHTSA submits this proposed Enforcement Guidance Bulletin for public comment. Based on the Agency's review and analysis of that input, it will develop and issue a final "Enforcement Guidance Bulletin" on this topic.

II. Legal and Policy Background

A. NHTSA's Enforcement Authority Under the Safety Act

The National Traffic and Motor Vehicle Safety Act, as amended ("Safety Act"), 49 U.S.C. 30101 *et seq.,* provides the basis and framework for NHTSA's enforcement authority over motor vehicle and motor vehicle equipment defects and noncompliances with federal motor vehicle safety standards (FMVSS). This authority includes investigations, administrative proceedings, civil penalties, and civil enforcement actions. While automation and other advanced technologies may modify motor vehicle and equipment design, NHTSA's statutory enforcement authority is general and flexible, which allows it to keep pace with innovation. The Agency has the authority to respond to a safety problem posed by new technologies in the same manner it has responded to safety problems posed by more established automotive technology and equipment, such as carburetors, the powertrain, vehicle control systems, and forward collision warning systems—by determining the existence of a defect that poses an unreasonable risk to motor vehicle safety and ordering the manufacturer to conduct a recall. *See* 49 U.S.C. 30118(b). This enforcement authority applies notwithstanding the presence or absence of an FMVSS for any particular type of advanced technology. *See, e.g., United States* v. *Chrysler Corp.,* 158 F.3d 1350, 1351 (D.C. Cir. 1998) (NHTSA "may seek the recall of a motor vehicle either when a vehicle has 'a defect related to motor vehicle safety' or when a vehicle 'does not comply with an applicable motor vehicle safety standard.' ").[1]

Under the Safety Act, NHTSA has authority over motor vehicles, equipment included in or on a motor vehicle at the time of delivery to the first purchaser (*i.e.,* original equipment), and motor vehicle replacement equipment. *See* 49 U.S.C. 30102(a)–(b). Motor vehicle equipment is broadly defined to include "any system, part, or component of a motor vehicle as originally manufactured" and "any similar part or component manufactured or sold for replacement or improvement of a system, part, or component." 49 U.S.C. 30102(a)(7)(A)–(B). The Safety Act also gives NHTSA jurisdiction over after-market improvements, accessories, or additions to motor vehicles. *See* 49 U.S.C. 30102(a)(7)(B). All devices "manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death" are similarly subject to NHTSA's enforcement authority. 49 U.S.C. 30102(a)(7)(C).

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[1] A manufacturer's obligation to recall motor vehicles and motor vehicle equipment determined to have a safety-related defect is separate and distinct from its obligation to recall motor vehicles and motor vehicle equipment that fail to comply with an applicable FMVSS. *See* 49 U.S.C. 30120.

With respect to new and emerging technologies, NHTSA considers automated vehicle technologies, systems, and equipment to be motor vehicle equipment, whether they are offered to the public as part of a new motor vehicle (as original equipment) or as an after-market replacement(s) of or improvement(s) to original equipment. NHTSA also considers software (including, but not necessarily limited to, the programs, instructions, code, and data used to operate computers and related devices), and after-market software updates, to be motor vehicle equipment within the meaning of the Safety Act. Software that enables devices not located in or on the motor vehicle to connect to the motor vehicle or its systems could, in some circumstances, also be considered motor vehicle equipment. Accordingly, a manufacturer of new and emerging vehicle technologies and equipment, whether it is the supplier of the equipment or the manufacturer of a motor vehicle on which the equipment is installed, has an obligation to notify NHTSA of any and all safety-related defects. *See* 49 CFR part 573. Any manufacturer or supplier that fails to do so may be subject to civil penalties. *See* 49 U.S.C. 30165(a).

NHTSA is charged with reducing deaths, injuries, and economic losses resulting from motor vehicle crashes. *See* 49 U.S.C. 30101. Part of that mandate includes ensuring that motor vehicles and motor vehicle equipment, including new technologies, perform in ways that "protect[] the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident." 49 U.S.C. 30102(a)(8). This responsibility also includes the nonoperational safety of a motor vehicle. *Id.* In pursuit of these safety objectives, and in the absence of adequate action by the manufacturer, NHTSA is authorized to determine that a motor vehicle or motor vehicle equipment is defective and that the defect poses an unreasonable risk to safety. *See* 49 U.S.C. 30118(b) and (c)(1).

B. Determining the Existence of a Defect

Under the Safety Act, a "defect" includes "any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment." 49 U.S.C. 30102(a)(2). It also includes a defect in design. *See United States* v. *General Motors Corp.*, 518 F.2d 420, 436 (D.C. Cir. 1975) ("*Wheels*"). A defect in an item of motor vehicle equipment (including hardware, software and other electronic systems) may be considered a defect of the motor vehicle itself. *See* 49 U.S.C. 30102(b)(1)(F).

Congress intended the Safety Act to represent a "commonsense" approach to safety and courts have followed that approach in determining what constitutes a "defect." *Wheels,* 518 F.2d at 436. *Accord Center for Auto Safety, Inc.* v. *National Highway Traffic Safety Administration*, 342 F. Supp. 2d 1, 15 (D.D.C. 2004); *Clarke* v. *TRW, Inc.*, 921 F. Supp. 927, 934 (N.D.N.Y. 1996). For this reason, a defect determination does not require an engineering explanation or root cause, but instead "may be based exclusively on the performance record of the component." *Wheels,* 518 F.2d at 432 ("[A] determination of a 'defect' does not require any predicate of a finding identifying engineering, metallurgical, or manufacturing failures."). Thus, a motor vehicle or item of equipment contains a defect if it is subject to a significant number of failures in normal operation, "including those failures occurring during 'specified use' or resulting from predictable abuse, but not including those resulting from normal deterioration due to age and wear." [2] *Center for Auto Safety,* 342 F.2d at 13–14 (citing *Wheels,* 518 F.2d at 427).

A "significant number of failures" is merely a "non-de minimus" quantity; it need not be a "substantial percentage of the total." *Wheels,* 518 F.2d at 438 n.84. Whether there have been a "significant number of failures" is a fact-specific inquiry that includes considerations such as: The failure rate of the component in question; the failure rates of comparable components; and the importance of the component to the safe operation of the vehicle. *Id.* at 427. In addition, where appropriate, the determination of the existence of a defect may depend upon the failure rate in the affected class of vehicles compared to that of other peer vehicles. *See United States* v. *Gen. Motors Corp.*, 841 F.2d 400, 412 (D.C. Cir.1988) ("*X-Cars*"). Finally, to constitute a defect, the failures must be attributable to the motor vehicle or equipment itself, rather than the driver or the road conditions. *See id.*

It must be noted, however, that in some circumstances, a crash, injury, or death need not occur in order for a vulnerability or safety risk to be considered a defect. The Agency relies on the performance record of a vehicle or component in making a defect determination where the engineering or root cause is unknown. *See Wheels,* 518 F.2d at 432. Where, however, the engineering or root cause is known, the Agency need not proceed with analyzing the performance record. *See id.; see also United States* v. *Gen. Motors Corp.*, 565 F.2d 754, 758 (D.C. Cir. 1977) ("*Carburetors*") (finding a defect to be safety-related if it "results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards . . . can definitely be expected to occur in the future."). For software or other electronic systems, for example, when the engineering or root cause of the vulnerability or risk is known, a defect exists regardless of whether there have been any actual failures.

C. Determining an Unreasonable Risk to Safety

In order to support a recall, a defect must be related to motor vehicle safety. *United States* v. *General Motors Corp.*, 561 F.2d 923, 928–29 (D.C. Cir. 1977) ("*Pitman Arms*"). In the context of the Safety Act, "motor vehicle safety" refers to an "unreasonable risk of accidents" and an "unreasonable risk of death or injury in an accident." 49 U.S.C. 30102(a)(8). Thus, while the defect analysis has generally entailed a retrospective look at how many failures have occurred (*see Wheels, Center for Auto Safety,* and *Pitman Arms*), the safety-relatedness question is forward-looking, and concerns the hazards that may arise in the future. *See, e.g., Carburetors,* 565 F.2d at 758.

In general, for a defect to present an "unreasonable risk," there must be a likelihood that it will cause or be associated with a "non-negligible" number of crashes, injuries, or deaths in the future. *See, e.g., Carburetors,* 565 F.2d at 759. This prediction of future hazards is called a "risk analysis." *See, e.g., Pitman Arms,* 561 F.2d at 924 (Leventhal, J., dissenting) ("GM presented a 'risk analysis' which predicts the likely number of future injuries or deaths to be expected in the remaining service life of the affected models"). A forward-looking risk analysis is compelled by the purpose of the Safety Act, which "is not to protect individuals from the risks associated with defective vehicles only after serious injuries have already occurred; it is to prevent serious injuries stemming from established defects *before* they occur." *Carburetors,* 565 F.2d at 759 (emphasis added).

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[2] "The protection afforded by the [Safety] Act was not limited to careful drivers who fastidiously observed speed limits and conscientiously complied with manufacturer's instructions on vehicle maintenance and operation . . . . [the statute provides] an added area of safety to an owner who is lackadaisical, who neglects regular maintenance . . ." *Wheels,* 518 F.2d at 434.

If the hazard is sufficiently serious, and at least some harm, however small, is expected to occur in the future, the risk may be deemed unreasonable. *Carburetors,* 565 F.2d at 759 ("In the context of this case . . . even an 'exceedingly small' number of injuries from this admittedly defective and clearly dangerous carburetor appears to us 'unreasonably large.' "). In other words, where a defect presents a "clearly" or "potentially dangerous" hazard, and where "at least some such hazards"—even an "exceedingly small" number—will occur in the future, that defect is necessarily safety-related. *See Carburetors,* 565 F.2d 754. This is so regardless of whether any injuries have already occurred, or whether the projected number of failures/injuries in the future is trending down. *See id.* at 759. Moreover, a defect may be considered "per se" safety-related if it causes the failure of a critical component; causes a vehicle fire; causes a loss of vehicle control; or suddenly moves the driver away from steering, accelerator, and brake controls—regardless of how many injuries or accidents are likely to occur in the future. *See Carburetors,* 565 F.2d 754 (engine fires); *Pitman Arms,* 561 F.2d 923 (loss of control); *United States* v. *Ford Motor Co.,* 453 F. Supp. 1240 (D.D.C. 1978) ("*Wipers*") (loss of visibility); *United States* v. *Ford Motor Co.,* 421 F. Supp. 1239, 1243–1244 (D.D.C. 1976) ("*Seatbacks*") (loss of control). Similarly, where it is alleged that a defect "is systematic and is prevalent in a particular class [of motor vehicles or equipment], . . . this is prima facie an unreasonable risk." *Pitman Arms,* 561 F.2d at 929.

III. Guidance and Recommended Best Practices: Safety-Related Defects, Unreasonable Risk, and Emerging Technologies

Consistent with the foregoing background, NHTSA's enforcement authority concerning safety-related defects in motor vehicles and equipment extends and applies equally to new and emerging automotive technologies. This includes, for example, automation technology and equipment, as well as advanced crash avoidance technologies. Where an autonomous vehicle or other emerging automotive technology causes crashes or injuries, or has a manifested safety-related failure or defect, and a manufacturer fails to act, NHTSA will exercise its enforcement authority to the fullest extent. Similarly, should the Agency determine that an autonomous vehicle or other new automotive technology presents a safety concern, the Agency will evaluate such technology through its investigative authority to determine whether the technology presents an unreasonable risk to safety.

To avoid violating Safety Act requirements and standards, manufacturers of emerging technology and the motor vehicles on which such technology is installed are strongly encouraged to take steps to proactively identify and resolve safety concerns before their products are available for use on public roadways. The Agency recognizes that much emerging automotive technology heavily involves electronic systems (such as hardware, software, sensors, global positioning systems (GPS) and vehicle-to-vehicle (V2V) safety communications systems). The Agency acknowledges that the increased use of electronic systems in motor vehicles and equipment may raise new and different safety concerns. However, the complexities of these systems do not diminish manufacturers' duties under the Safety Act—both motor vehicle manufacturers and equipment manufacturers remain responsible for ensuring that their vehicles or equipment are free of safety-related defects or noncompliances, and do not otherwise pose an unreasonable risk to safety. Manufacturers are also reminded that they remain responsible for promptly reporting to NHTSA any safety-related defects or noncompliances, as well as timely notifying owners and dealers of the same.

In assessing whether a motor vehicle or piece of motor vehicle equipment poses an unreasonable risk to safety, NHTSA considers the likelihood of the occurrence of a harm (*i.e.,* fire, stalling, or malicious cybersecurity attack), the potential frequency of a harm, the severity of a harm, known engineering or root cause, and other relevant factors. Where a threatened harm is substantial, low potential frequency may not carry as much weight in NHTSA's analysis.

Software installed in or on a motor vehicle—which is motor vehicle equipment—presents its own unique safety risks. Because software often interacts with a motor vehicle's critical safety systems (*i.e.,* systems encompassing critical control functions such as braking, steering, or acceleration) the operation of those systems could be substantially altered by after-market software updates. Additionally, software located outside the motor vehicle (*i.e.,* portable devices with vehicle-related software applications) could be used to affect and control a motor vehicle's safety systems. If software has manifested a safety-related performance failure, or otherwise presents an unreasonable risk to safety, then the software failure or safety-risk constitutes a defect compelling a recall.

In the case of cybersecurity vulnerabilities, NHTSA will weigh several factors in determining whether a vulnerability poses an unreasonable risk to safety (and thus constitutes a safety-related defect), including: (i) The amount of time elapsed since the vulnerability was discovered (*e.g.,* less than one day, three months, or more than six months); (ii) the level of expertise needed to exploit the vulnerability (*e.g.,* whether a layman can exploit the vulnerability or whether it takes experts to do so); (iii) the accessibility of knowledge of the underlying system (*e.g.,* whether how the system works is public knowledge or whether it is sensitive and restricted); (iv) the necessary window of opportunity to exploit the vulnerability (*e.g.,* an unlimited window or a very narrow window); and, (v) the level of equipment needed to exploit the vulnerability (*e.g.,* standard or highly specialized).

NHTSA uses those factors, and others, to help assess the overall probability of a malicious cybersecurity attack. The probability of an attack includes circumstances in which a vulnerability has been identified, but no actual incidents have been documented or confirmed. Confirmed field incidents may increase the weight NHTSA places on the probability of an attack in its assessment. Even before evidence of an attack, it is foreseeable that hackers will try to exploit cybersecurity vulnerabilities. For instance, if a cybersecurity vulnerability in any of a motor vehicle's entry points (*e.g.,* Wi-Fi, infotainment systems, the OBD–II port) allows remote access to a motor vehicle's critical safety systems (*i.e.,* systems encompassing critical control functions such as braking, steering, or acceleration), NHTSA may consider such a vulnerability to be a safety-related defect compelling a recall.

Manufacturers should consider adopting a life-cycle approach to safety risks when developing automated vehicles, other innovative automotive technologies, and safety compliance programs and other business practices in connection with such technologies. A life-cycle approach would include "elements of assessment, design, implementation, and operations as well as an effective testing and certification program." National Highway Traffic Safety Administration, *A Summary of Cybersecurity Best Practices,* (Oct. 2014), *http://www.nhtsa.gov/DOT/*

NHTSA/NVS/Crash%20Avoidance/Technical%20Publications/2014/812075_CybersecurityBestPractices.pdf. Considering hardware, software, and network and cloud security, manufacturers should consider developing a simulator, using case scenarios and threat modeling on all systems, sub-systems, and devices, to test for safety risks, including cybersecurity vulnerabilities, at all steps in the manufacturing process for the entire supply chain, to implement an effective risk mitigation plan. *See id.*

Manufacturers of emerging technologies and the motor vehicles on which such technology is installed have a continuing obligation to proactively identify safety concerns and mitigate the risks of harm. If a manufacturer discovers or is otherwise made aware of any defects, noncompliances, or other unreasonable risks to safety after the vehicle and/or technology has been in safe operation for some time, then it should strongly consider promptly contacting the appropriate NHTSA personnel to determine the necessary next steps. Where a manufacturer fails to adequately address a safety concern, NHTSA, when appropriate, will explicitly address that concern through its enforcement authority.

Applicability/Legal Statement: This proposed Enforcement Guidance Bulletin sets forth NHTSA's current views on the topic of emerging automotive technology and suggests guiding principles and best practices to be utilized by motor vehicle and equipment manufacturers in this context. This proposed Bulletin is not a final agency action and is intended as guidance only. This proposed Bulletin does not have the force or effect of law. This Bulletin is not intended, nor can it be relied upon, to create any rights enforceable by any party against NHTSA, the U.S. Department of Transportation, or the United States. These recommended practices do not establish any defense to any violations of the Safety Act, or regulations thereunder, or violation of any statutes or regulations that NHTSA administers. This Bulletin may be revised in writing without notice to reflect changes in the Agency's views and analysis, or to clarify and update text.

Authority: 49 U.S.C. 30101–30103, 30116–30121, 30166; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8.

Issued in Washington, DC, on March 25, 2016 under authority delegated pursuant to 49 CFR 1.95.

Paul A. Hemmersbaugh,

Chief Counsel.

[FR Doc. 2016–07353 Filed 3–29–16; 4:15 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Renewal; Submission for OMB Review; Securities Exchange Act Disclosure Rules and Securities of Federal Savings Associations

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "Securities Exchange Act Disclosure Rules and Securities of Federal Savings Associations." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by May 2, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0106, 400 7th Street SW., suite 3E–218, mail stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0106, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Securities Exchange Act Disclosure Rules and Securities of Federal Savings Associations.

OMB Control No.: 1557–0106.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements.

The Securities and Exchange Commission (SEC) is required by statute to collect, in accordance with its regulations, certain information and documents from any firm that is required to register its stock with the SEC.[1] Federal law requires the OCC to apply similar regulations to any national bank or Federal savings association similarly required to be registered (those with a class of equity securities held by 2,000 or more shareholders).[2]

12 CFR part 11 ensures that a national bank or Federal savings association whose securities are subject to registration provides adequate information about its operations to current and potential shareholders, depositors, and the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under the rule. Investors,

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[1] 15 U.S.C. 78m(a)(1).

[2] 15 U.S.C. 78l(i).

depositors, and the public use the information to make informed investment decisions.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden: 117.

The OCC issued a notice for 60 days of comment regarding this collection on January 20, 2016, 81 FR 3237. No comments were received. Comments continue to be requested on:

(a) Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 28, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Office of the Comptroller of the Currency.

[FR Doc. 2016–07350 Filed 3–31–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Renewal; Submission for OMB Review; Leasing

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "Leasing." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by May 2, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0206, 400 7th Street SW., suite 3E–218, mail stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0206, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Leasing.

OMB Control No.: 1557–0206.

Description: This submission requests the renewal of PRA clearance for an existing regulation and involves no change to the regulation or to the information collection requirements.

Under 12 CFR 23.4(c), national banks must liquidate or release property that is no longer subject to lease (off-lease property) within five years from the date of the lease expiration. If a national bank wishes to extend the five-year holding period for up to an additional five years, it must obtain OCC approval. Permitting a national bank to extend the holding period may result in cost savings. It also may provide flexibility for a national bank that experiences unusual or unforeseen conditions that would make it imprudent to dispose of the off-lease property prior to the expiration of the five-year holding period. Section 23.4(c) requires a national bank seeking an extension to provide a clearly convincing demonstration as to why any additional holding period is necessary. In addition, a national bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease. These requirements enable the OCC to ensure that a national bank is not holding the property for speculative reasons and that the value of the property is recorded in accordance with generally accepted accounting principles (GAAP).

Under 12 CFR 23.6, leases are subject to the lending limits prescribed by 12 U.S.C. 84, as implemented by 12 CFR part 32, or, if the lessee is an affiliate of the national bank, to the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1. Twelve U.S.C. 24 contains two separate provisions authorizing a national bank to acquire personal property for purposes of lease financing. Twelve U.S.C. 24(Seventh) authorizes leases of personal property (Section 24(Seventh) Leases) if the lease is a conforming lease as defined in 12 CFR 23.2(d)(2) and represents a noncancelable obligation of the lessee (*i.e.*, the lease serves as the functional equivalent of a loan). See 12 CFR 23.20. A national bank also may acquire personal property for purposes of lease financing under the authority of 12 U.S.C. 24(Tenth) (CEBA Leases). Section 23.5 requires that if a national bank enters into both types of leases, its records must distinguish between the two types of leases. This information is required to establish that the national bank is complying with the limitations and requirements applicable to the two types of leases.

National banks use the information to ensure their compliance with applicable

Federal banking law and regulations and accounting principles. The OCC uses the information in conducting examinations and as an auditing tool to verify compliance with laws and regulations. In addition, the OCC uses national bank requests for permission to extend the holding period for off-lease property to ensure national bank compliance with relevant laws and regulations and to ensure bank safety and soundness.

Type of Review: Regular.

Affected Public: Individuals; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents: 345.

Estimated Total Annual Burden: 678.

The OCC published a notice for 60 days of comment on January 20, 2016, 81 FR 3236. No comments were received. Comments continue to be requested on:

(a) Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 28, 2016.

Mary Hoyle Gottlieb,

Regulatory Specialist, Legislative and Regulatory Activities Division.

[FR Doc. 2016–07351 Filed 3–31–16; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5884

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5884, Work Opportunity Credit.

DATES: Written comments should be received on or before May 31, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Work Opportunity Credit.

OMB Number: 1545–0219.

Form Number: 5884.

Abstract: Internal Revenue Code section 38(b)(2) allows a credit against income tax to employers hiring individuals from certain targeted groups such as welfare recipients, etc. The employer uses Form 5884 to compute this credit. The IRS uses the information on the form to verify that the correct amount of credit was claimed.

Current Actions: Changes were made to comply with legislative rulings.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations and farms.

Estimated Number of Responses: 11,677.

Estimated Time per Respondent: 6 hours, 39 minutes.

Estimated Total Annual Burden Hours: 77,653.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 29, 2016.

Sara Covington,

IRS Tax Analyst.

[FR Doc. 2016–07435 Filed 3–31–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Information Reporting Program Advisory Committee (IRPAC); Nominations

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) requests applications of individuals to be considered for selection as members of the Information Reporting Program Advisory Committee (IRPAC). Nominations should describe and document the proposed member's qualifications for IRPAC membership, including the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that he or she wishes to represent on the committee. In addition to nominations from interested individuals, the IRS is soliciting nominations from professional and public interest groups that wish to have representatives on the IRPAC. IRPAC will be comprised of 19 members. There are eight positions open for calendar year 2017. It is important that IRPAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as the taxpayer or stakeholder base the applicant represents.

The IRPAC advises the IRS on information reporting issues of mutual concern to the private sector and the federal government. The committee works with the Commissioner of Internal Revenue and other IRS leadership to provide recommendations on a wide range of information reporting administration issues. Membership is balanced to include representation from the tax professional community, small and large businesses, banks, colleges and universities, and industries such as securities, payroll, finance and software.

DATES: Written nominations must be received on or before June 2, 2016.

ADDRESSES: Nominations should be sent to: Michael Deneroff, IRS National Public Liaison, CL:NPL:PSRM, Room 7559, 1111 Constitution Avenue NW., Washington, DC 20224, Attn: IRPAC Nominations. Applications may also be submitted via fax to 855–811–8020 or via email at *PublicLiaison@irs.gov.* Application packages are available on the IRS Web site at ***http://www.irs.gov/*** *for-tax-pros.* Application packages may also be requested by telephone from National Public Liaison, 202–317–6851 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Michael Deneroff at 202–317–6851 (not a toll-free number) or *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Established in 1991 in response to an administrative recommendation in the final Conference Report of the Omnibus Budget Reconciliation Act of 1989, the IRPAC works closely with the IRS to provide recommendations on a wide range of issues intended to improve the information reporting program and achieve fairness to taxpayers. Conveying the public's perceptions of IRS activities to the Commissioner, the IRPAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds to the Committee's activities.

Each IRPAC member is nominated by the Commissioner with the concurrence of the Secretary of Treasury to serve a three-year term. Working groups address policies and administrative issues specific to information reporting. Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation are reimbursed within prescribed federal travel limitations.

Receipt of applications will be acknowledged, and all individuals will be notified when selections have been made. In accordance with Department of Treasury Directive 21–03, a clearance process including fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check and a practitioner check with the Office of Professional Responsibility will be conducted.

Equal opportunity practices will be followed for all appointments to the IRPAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities are welcomed for service on advisory committees and, therefore, extends particular encouragement to nominations from such appropriately qualified candidates.

Dated: March 25, 2016.

John Lipold,

Designated Federal Official, National Public Liaison.

[FR Doc. 2016–07352 Filed 3–31–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning golden parachute payments.

DATES: Written comments should be received on or before May 31, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Golden Parachute Payments.

OMB Number: 1545–1851. Regulation Project Number: REG–124312–02 (TD 9083).

Abstract: These regulations deny a deduction for excess parachute payments. A parachute payment is payment in the nature of compensation to a disqualified individual that is contingent on a change in ownership or control of a corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if certain requirements are met (such as shareholder approval and disclosure requirements).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 800.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 12,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 28, 2016.

Sara Covington,

Tax Analyst.

[FR Doc. 2016–07433 Filed 3–31–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning losses on small business stock.

DATES: Written comments should be received on or before May 31, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Losses on Small Business Stock.

OMB Number: 1545–1447.

Regulation Project Number: CO–46–94; TD 8594.

Abstract: Section 1.1244(e)–1(b) of the regulation requires that a taxpayer claiming an ordinary loss with respect to section 1244 stock must have records sufficient to establish that the taxpayer satisfies the requirements of section 1244 and is entitled to the loss. The records are necessary to enable the Service examiner to verify that the stock qualifies as section 1244 stock and to determine whether the taxpayer is entitled to the loss.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 2,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 24, 2016.

Sara Covington,

Tax Analyst.

[FR Doc. 2016–07434 Filed 3–31–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 28, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 2, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Control Number: 1545–0115.

Type of Review: Revision of a currently approved collection.

Title: Form 1099 MISC—Miscellaneous Income.

Abstract: Form 1099–MISC is used by payers to report payments of $600 or more of rent, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of $5,000 or more.

Estimated Total Annual Burden Hours: 26,907,070.

OMB Control Number: 1545–1690.

Type of Review: Extension of a currently approved collection.

Title: Notice 2000–28, Coal Exports.

Abstract: Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been paid with respect to a nontaxable sale or coal for export.

Estimated Total Annual Burden Hours: 400.

OMB Control Number: 1545–1972.

Type of Review: Revision of a currently approved collection.

Title: Supplemental Income and Loss.

Abstract: Schedule E (Form 1040) is used by individuals to report their supplemental income. The data is used to verify that the income reported on their tax return is correct.

Estimated Total Annual Burden Hours: 5,665,800.

OMB Control Number: 1545–1984.

Type of Review: Extension of a currently approved collection.

Title: Domestic Production Activities Deduction.

Abstract: Section 102 of the American Jobs Creation Act of 2004 (section 199 of the Internal Revenue Code), created a domestic production activities deduction for tax years beginning after December 31, 2004. Taxpayers will use the Form 8903 and related instructions to calculate the deduction. The Form 8903 will be filed by corporations, individuals, partners (including partners of electing large partnerships), S corporation shareholders, beneficiaries of estates and trusts, cooperatives, and patrons of cooperatives.

Estimated Total Annual Burden Hours: 7,398,000.

OMB Control Number: 1545–1998.

Type of Review: Revision of a currently approved collection.

Title: Alternative Motor Vehicle Credit.

Abstract: Taxpayers will file Form 8910 to claim the credit for certain alternative motor vehicles placed in service after 2005.

Estimated Total Annual Burden Hours: 19,764.

OMB Control Number: 1545–2145.

Type of Review: Extension of a currently approved collection.

Title: Notice 2009–52, Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination with Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.

Abstract: The notice provides a description of the procedures that taxpayers will be required to follow to make an irrevocable election to take the investment tax credit for energy property under section 48 of the Internal Revenue Code in lieu of the production tax credit under section 45 of the Internal Revenue Code.

Estimated Total Annual Burden Hours: 100.

OMB Control Number: 1545–2166.

Type of Review: Extension of a currently approved collection.

Title: Form 5316, Application for Group or Pooled Trust Ruling.

Abstract: Group/pooled trust sponsors file this form to request a determination letter from the IRS for a determination that the trust is a group trust arrangement as described in Rev. Rul. 81–100, 1981–1 C.B. 326, as modified and clarified by Rev. Rul. 2004–67, 2004–28 I.R.B.

Estimated Total Annual Burden Hours: 3,800.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–07437 Filed 3–31–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 28, 2016.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 2, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8117, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0011.

Type of Review: Revision of a currently approved collection.

Title: Formula and/or Process For Article Made With Specially Denatured Spirits.

Abstract: Form TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to ensure that the manufacturing formulas and processes for an article conform to the requirements of 26 U.S.C. 5273 regarding the sale, use, and recovery of denatured distilled spirits.

Estimated Total Annual Burden Hours: 827.

OMB Number: 1513–0012.

Type of Review: Revision of a currently approved collection.

Title: User's Report of Denatured Spirits.

Abstract: The information collected on TTB F 5150.18 summarizes the activities of a permit holder regarding the use of denatured spirits. In order to protect the revenue and ensure that permit holders lawfully operate, TTB examines and verifies the information collected on this report to identify unusual activities, errors, and omissions regarding the use of denatured spirits.

Estimated Total Annual Burden Hours: 1,073.

OMB Number: 1513–0024.

Type of Review: Revision of a currently approved collection.

Title: Report—Export Warehouse Proprietor.

Abstract: As authorized by 26 U.S.C. 5722, export warehouse proprietors use TTB F 5220.4 to account for receipt, storage, and disposition of processed tobacco and taxable tobacco products, cigarette papers, and cigarette tubes. TTB uses this information to protect the revenue by detecting and preventing diversion of products intended for export and to ensure compliance with Federal laws and regulations relating to the removal of tobacco products, cigarette papers, and cigarette tubes for export, which is tax-exempt.

Estimated Total Annual Burden Hours: 984.

OMB Number: 1513–0029.

Type of Review: Revision of a currently approved collection.

Title: Certificate of Tax Determination—Wine.

Abstract: The information collected on TTB F 5120.20 supports an exporter's claim for drawback of the Federal excise tax on wine by requiring the exporter to obtain the producer's or bottler's certification that the tax has been paid or determined on a specified amount and type of wine that contains a specified amount of alcohol by volume.

Estimated Total Annual Burden Hours: 500.

OMB Number: 1513–0038.

Type of Review: Extension of a currently approved collection.

Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.

Abstract: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. The proprietor of the receiving distilled spirits plant becomes liable for the Federal excise tax on the spirits received in bond from another plant. In order to protect the revenue, TTB uses the information collected on this form to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.

Estimated Total Annual Burden Hours: 228.

OMB Number: 1513–0039.

Type of Review: Revision of a currently approved collection.

Title: Distilled Spirits Plants Warehousing Records (TTB REC 5110/02), and Monthly Report of Storage Operations.

Abstract: The Internal Revenue Code at 26 U.S.C. 5005(c) provides that the proprietor of a distilled spirits plant is liable for the Federal excise taxes on all spirits stored on the plant's premises, and the records and reports required under this information collection are used by TTB to protect that revenue. TTB uses the collected information to account for a proprietor's tax liability, to verify the quantity and kind of distilled spirits and wine in storage, and to determine the adequacy of a proprietor's bond coverage. TTB also uses this information to monitor industry activities and compliance.

Estimated Total Annual Burden Hours: 52,752.

OMB Number: 1513–0045.

Type of Review: Revision of a currently approved collection.

Title: Distilled Spirits Plants—Excise Taxes (TTB REC 5110/06).

Abstract: This collection of information is necessary to account for and verify taxable removals of distilled spirits. Under the TTB regulations, industry members must keep records of spirits removed and the applicable tax rates, and must keep records to account for and verify nontaxable removals. TTB uses the data collected to audit tax returns and payments, verify claims for refunds or remission of tax, and account for cover over of taxes to Puerto Rico and the U.S. Virgin Islands.

Estimated Total Annual Burden Hours: 57,148.

OMB Number: 1513–0046.

Type of Review: Revision of a currently approved collection.

Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act.

Abstract: Form TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits operations.

Estimated Total Annual Burden Hours: 30.

OMB Number: 1513–0049.

Type of Review: Revision of a currently approved collection.

Title: Distilled Spirits Plant Denaturation Records (TTB REC 5110/04), and Monthly Report of Processing (Denaturing) Operations.

Abstract: The information collected is necessary to account for and to verify the denaturation of distilled spirits. A tax is imposed on distilled spirits other than those used for certain authorized nonbeverage purposes. Denatured spirits are normally not taxed and, as a result, a full accounting of those spirits is necessary to ensure that they have not been unlawfully diverted for beverage use. TTB uses the information collected under this information collection to protect the revenue.

Estimated Total Annual Burden Hours: 4,380.

OMB Number: 1513–0056.

Type of Review: Extension of a currently approved collection.

Title: Distilled Spirits Plants—Transaction and Supporting Records (TTB REC 5110/05).

Abstract: A tax is imposed on distilled spirits other than those used for certain authorized nonbeverage purposes. The Internal Revenue Code at 26 U.S.C. 5207 provides that the proprietor of a distilled spirits plant (DSP) must maintain records of production activities, storage activities, denaturing activities, and processing activities, and must render reports covering those activities. This collection of information are those transaction records which a DSP proprietor must maintain as source documents for each of the activities listed above. The information contained in these records are used by distilled spirits plant proprietors to account for spirits and by TTB to verify those accounts and consequent tax liabilities. These records also account for spirits eligible for credit or drawback of Federal excise tax.

Estimated Total Annual Burden Hours: 47,916.

OMB Number: 1513–0060.

Type of Review: Revision of a currently approved collection.

Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol (TTB REC 5150/04).

Abstract: Tax-free alcohol is used for nonbeverage purposes in scientific research, for medicinal uses, and for other purposes by educational organizations, hospitals, clinics, laboratories, and similar institutions, and by State, local, and tribal governments. Use of tax-free alcohol is regulated to prevent illegal diversion to beverage use and for public safety. The applications, notices, and source records required by this information collection protect the revenue, help prevent and detect diversion, and ensure lawful use of tax-free alcohol.

Estimated Total Annual Burden Hours: 200.

OMB Number: 1513–0066.

Type of Review: Extension of a currently approved collection.

Title: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices (TTB REC 5170/03).

Abstract: The Internal Revenue Code at 26 U.S.C. 5122 requires retail liquor dealers to keep records of all alcohol beverages received and to keep records of the disposition of alcohol beverages as may be prescribed by regulation. The TTB regulations at 27 CFR 31.181 require retail dealers to keep receipt invoices (or a separate record book) of all alcohol beverages received and to keep records of any sales of alcohol beverages of over 20 wine gallons to the same person at the same time. Under 27 CFR 31.191, these records must be maintained for at least three years. The information contained in these retail dealer records fulfills the statutory requirement.

Estimated Total Annual Burden Hours: 1.

OMB Number: 1513–0067.

Type of Review: Revision of a currently approved collection.

Title: Wholesale Alcohol Dealer Recordkeeping Requirement Variance Requests and Approvals (TTB REC 5170/6).

Abstract: Under the authority of the Internal Revenue Code at 26 U.S.C. 5121, the TTB regulations in 27 CFR part 31 require wholesale dealers to keep records of the receipt and disposition of distilled spirits. As authorized at 27 CFR 31.159, wholesale dealers may submit letterhead applications to the appropriate TTB officer for approval of variations in the type and format of such records, and, as authorized at 27 CFR 31.172, for variations in the place of retention for those records. TTB review of these variance applications is necessary in order to determine that the variance would not unduly hinder the effective administration of 27 CFR part 31, jeopardize the revenue, or be contrary to any provisions of law.

Estimated Total Annual Burden Hours: 5.

OMB Number: 1513–0082.

Type of Review: Revision of a currently approved collection.

Title: Alternate Methods or Procedures and Emergency Variations from Requirements for Exports of Liquors (TTB REC 5170/7).

Abstract: Under the TTB regulations in 27 CFR part 28, exporters of alcohol may file applications requesting TTB approval of alternate methods or procedures and emergency variations from the requirements of that part. TTB uses such applications to determine if the requested method, procedure, or emergency variation will protect the revenue, is not contrary to law, and will not pose a burden to TTB in administering part 28, while allowing exporters the maximum operational flexibility.

Estimated Total Annual Burden Hours: 138.

OMB Number: 1513–0097.

Type of Review: Extension of a currently approved collection.

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax by Electronic Fund Transfer.

Abstract: TTB collects Federal excise taxes on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers, and producers, and taxpayers may remit their excise tax payments by electronic funds transfer (EFT), as authorized under 26 U.S.C. 6302. Taxpayers who elect to pay these taxes by EFT must furnish a written notice to TTB when they elect to use, or discontinue use of, EFT. TTB uses this information to anticipate and monitor taxpayer methods of payment and to ensure that taxes are remitted in the appropriate form, as chosen by the taxpayer.

Estimated Total Annual Burden Hours: 1.

OMB Number: 1513–0100.

Type of Review: Extension of a currently approved collection.

Title: Applications, Notices, and Relative to Importation and Exportation of Distilled Spirits, Wine, and Beer, Including Puerto Rico and Virgin Islands.

Abstract: Distilled spirits, industrial alcohol, beer and wine are taxed when imported into the United States, but the Federal excise taxes collected on these commodities brought into the United States from Puerto Rico and the U.S. Virgin Islands are largely returned to their respective governments. Exports are generally tax free. The documents required under this information collection ensure that the proper taxes are collected and returned according to law.

Estimated Total Annual Burden Hours: 180.

OMB Number: 1513–0104.

Type of Review: Extension of a currently approved collection.

Title: Information Collected in Support of Small Producer's Wine Tax Credit (TTB REC 5120/11).

Abstract: Under 26 U.S.C. 5041(c), certain small wine producers are eligible for a tax credit which may be taken to reduce the Federal excise tax they pay on wines removed from their premises. In addition, small producers can transfer their tax credit to bonded warehouses, which store their wine and ship it on their instructions. Under TTB regulations, the transferee uses information provided by the small producer to take the appropriate credit on behalf of the small producer, and the producer will use the information to monitor its own tax payments to ensure it does not exceed the authorized annual credit. The information is used by taxpayers in preparing their returns and by TTB to verify tax computation.

Estimated Total Annual Burden Hours: 2,800.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–07426 Filed 3–31–16; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the annual meeting of the Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will be held May 4–6, 2016, at the Albuquerque Marriott, 2101 Louisiana Boulevard NE., Albuquerque, New Mexico. On May 4, the meeting will begin at 8:00 a.m. and end at 11:30 a.m. On May 5, the meeting will begin at 8:30 a.m. and end at 5:00 p.m. On May 6, the meeting will begin at 8:30 a.m. and end at 3:45 p.m. The meeting is open to the public.

The Committee, comprised of fifty-three national voluntary organizations, advises the Secretary, through the Under Secretary for Health, on the coordination and promotion of volunteer activities and strategic partnerships within VA facilities, in the community, and on matters related to volunteerism and charitable giving. The purposes of this meeting are: To recognize the Committee's 70 years of service to our Nation's Veterans; provide for Committee review of volunteer policies and procedures; to accommodate full and open communications between organization representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, place, motivate, and recognize volunteers; and to provide Committee recommendations. The May 4 session will include a National Executive Committee Meeting, Health and Information Fair, and VAVS Representative and Deputy Representative training session. The May 5 business session will include welcoming remarks from local officials, and remarks by VA officials on new and ongoing VA initiatives. The recipients of the American Spirit Recruitment Awards, VAVS Award for Excellence, and the NAC male and female Volunteer of the Year awards will be recognized. Educational workshops will be held in the afternoon and will focus on successful partnering, volunteer manager burnout, social media, and volunteer onboarding. On May 6, the morning business session will include subcommittee reports, the Voluntary Service Report, and the Veterans Health Administration Update. The educational workshops will be repeated in the afternoon. No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Committee's review to Ms. Sabrina C. Clark, Designated Federal Officer, Voluntary Service Office (10B2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *Sabrina.Clark@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Clark at (202) 461–7300.

Dated: March 28, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–07318 Filed 3–31–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2 that a meeting of the Advisory Committee on Minority Veterans will be held in Jacksonville, Florida from April

12–14, 2016, at the below times and locations:

On April 12, from 8:45 a.m. to 3:30 p.m., at the Lake City VA Medical Center, Building 100, Room A123 (Director's Conference Room) 619 S. Marion Avenue, Lake City, Florida;

On April 13, from 9:15 a.m. to 11:15 a.m., at the Jacksonville National Cemetery, 4083 Lannie Road, Jacksonville, FL; from 1:45 p.m. to 3:30 p.m., at the Jacksonville Outpatient Clinic, Room 2L 103–106, 1536 N. Jefferson St., Jacksonville, FL; 4:30 p.m. to 6:30 p.m., conducting a Town Hall Meeting at the University of Florida, LRC Auditorium, Learning Resource Center-1st Floor, 653–1 West 8t Street, Jacksonville, FL .

On April 14, from 8:45 a.m. to 4:45 p.m., at the Jacksonville Outpatient Clinic, Room 2L 103–106, 1536 N. Jefferson St., Jacksonville, FL.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority Veterans, to assess the needs of minority Veterans and to evaluate whether VA compensation and pension, medical and rehabilitation services, memorial services outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities subsequent to the meeting.

On the morning of April 12 from 8:45 a.m. to 11:00 a.m., the Committee will meet in open session with key staff at the Lake City VA Medical Center to discuss services, benefits, delivery challenges, and successes. From 11:00 a.m. to 12:00 p.m., the Committee will convene a closed session in order to protect patient privacy as the Committee tours the VA Medical Center. In the afternoon from 1:30 p.m. to 3:30 p.m., the Committee will reconvene as the Committee is briefed by senior Veterans Benefits Administration staff from the St. Petersburg Regional Benefit Office.

On the morning of April 13 from 9:15 a.m. to 11:15 a.m., the Committee will convene in open session at the Jacksonville National Cemetery followed by a tour of the cemetery. The Committee will meet with key staff to discuss services, benefits, delivery challenges and successes. In the afternoon from 1:45 p.m. to 3:30 p.m., the Committee will reconvene in open session to be briefed and tour the VA Jacksonville Outpatient Clinic. In the evening, the Committee will hold a Veterans Town Hall meeting beginning at 4:30 p.m., at the University of Florida LRC Auditorium.

On the morning of April 14 from 8:45 a.m. to 12:00 p.m., the Committee will convene in open session at the VA Jacksonville Outpatient Clinic to conduct an exit briefing with leadership from the Lake City VA Medical Center, St. Petersburg Regional Benefit Office, and Jacksonville National Cemetery. In the afternoon from 1:30 p.m. to 4:00 p.m., the Committee will work on drafting recommendations for the annual report to the Secretary.

Portions of these visits are closed to the public in accordance with 5 U.S.C. 552b(c)(6). Exemption 6 permits to Committee to close those portions of a meeting that is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. During the closed sessions the Committee will discuss VA beneficiary and patient information in which there is a clear unwarranted invasion of the Veteran or beneficiary privacy.

Time will be allocated for receiving public comments on April 14, at 10 a.m. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come first serve basis. Individuals who speak are invited to submit a 1–2 page summaries of their comments at the time of the meeting for inclusion in the official record. The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority Veterans. Such comments should be sent to Ms. Juanita Mullen, Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, or email at *Juanita.Mullen@va.gov*. For additional information about the meeting, please contact Ms. Juanita Mullen at (202) 461–6199.

Dated: March 28, 2016.

Jelessa Burney,

Federal Advisory Committee Management Office.

[FR Doc. 2016–07325 Filed 3–31–16; 8:45 am]

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Part II

Department of the Treasury

31 CFR Part 50
Terrorism Risk Insurance Program; Proposed Rules

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AC53

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing these proposed rules to implement changes to the Terrorism Risk Insurance Program (TRIP or Program) required by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act). In addition, Treasury proposes for the first time a Civil Penalties rule under TRIP, pursuant to authority granted by Congress in the Terrorism Risk Insurance Act of 2002 (TRIA). Treasury also proposes adoption, with certain minor changes, of a previously proposed rule addressing the Final Netting of Payments. Finally, certain other changes are proposed to various sections of the prior rules in order to clarify certain matters, make technical and conforming changes, and to address changes required by the passage of time and other legislation.

DATES: Written comments must be submitted on or before May 31, 2016. Early submissions are encouraged.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail (if hard copy, preferably an original and two copies) to the Federal Insurance Office, Attention: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with "2015 TRIA Reauthorization Proposed Rules Comments." Please include your name, group affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

In general, comments received will be posted on ***http://www.regulations.gov*** without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–2922 (not a toll free number) or Kevin Meehan, Policy Advisor, Federal Insurance Office, 202–622–7009 (not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002 (the Act or TRIA)[1] was enacted on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. TRIA requires insurers to "make available" terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. The Secretary of the Treasury (Secretary) administers the Program, including the issuance of regulations and procedures. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Insurance Office assists the Secretary in administering the Program.[2]

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Act, Treasury has issued interim guidance to be relied upon by insurers until superseded by regulations. To date, rules establishing general provisions implementing the Program, including key definitions, and requirements for policy disclosures and mandatory availability, are found in Subparts A, B, and C of 31 CFR part 50.[3] Treasury's rules applying provisions of the Act to state residual market insurance entities and state workers' compensation funds are set forth in Subpart D of 31 CFR part 50.[4] Rules concerning claims procedures governing payment of the Federal share of compensation for insured losses are currently found at subpart F of 31 CFR part 50.[5] Subpart G of 31 CFR part 50 currently contains rules on audit and recordkeeping requirements for insurers,[6] while Subpart H of 31 CFR part 50 currently addresses recoupment and surcharge procedures.[7] Finally, Subpart I of 31 CFR part 50 currently contains rules implementing the litigation management provisions of TRIA,[8] and Subpart J of 31 CFR part 50 currently addresses rules concerning the cap on annual liability established under TRIA.[9]

The Program has been reauthorized three times. On December 22, 2005, the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–444, 119 Stat. 2660) (2005 Extension Act) was enacted, which extended the Program through December 31, 2007. In addition to extending the duration of the Program, the 2005 Extension Act also eliminated certain lines of insurance from the Program, revised the insurer deductible, Federal share, and recoupment provisions of the Program, and introduced the "Program Trigger" as a threshold that must be met before any Federal payments can be made. Rules implementing these changes were issued by Treasury.[10]

On December 26, 2007, the Terrorism Risk Insurance Program Reauthorization

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[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] 31 U.S.C. 313(c)(1)(D).

[3] See 68 FR 9804 (Feb. 28, 2003) (Program definitions (Interim Final Rule)); 68 FR 19302 (April 18, 2003) (disclosure and mandatory availability requirements (Interim Final Rule)); 68 FR 41250 (July 11, 2003) (Program definitions (Final Rule)); 68 FR 48280 (Aug. 13, 2003) ("direct earned premium" definition (Final Rule)).

[4] See 68 FR 19309 (Apr. 18, 2003) (residual market entities and state compensation funds (Notice of Proposed Rulemaking)); 68 FR 59715 (Oct. 17, 2003) (residual market entities and state compensation funds (Final Rule)).

[5] See 68 FR 67100 (Dec. 1, 2003) (claims procedures (Notice of Proposed Rulemaking)); 69 FR 39296 (June 29, 2004) (claims procedures (Final Rule)); 70 FR 2830 (Jan. 18, 2005 (timing of affiliation for purposes of claims payments (Notice of Proposed Rulemaking)); 70 FR 34348 (June 14, 2005) (timing of affiliation for purposes of claims payments (Final Rule)).

[6] See 68 FR 67100 (Dec. 1, 2003) (audit and investigative procedures (Notice of Proposed Rulemaking)); 69 FR 39296 (audit and investigative procedures (Final Rule)).

[7] See 73 FR 53798 (Sept. 17, 2008) (recoupment and surcharge procedures (Notice of Proposed Rulemaking)); 74 FR 66051 (Dec. 14, 2009) (recoupment and surcharge procedures (Final Rule)).

[8] See 69 FR 25341 (May 6, 2004) (Federal cause of action and settlement approval provisions (Notice of Proposed Rulemaking)); 69 FR 44932 (July 28, 2004) (Federal cause of action and settlement approval provisions (Final Rule)).

[9] See 73 FR 56767 (Sept. 30, 2008) (cap on annual liability (Notice of Proposed Rulemaking)); 74 FR 66061 (Dec. 14, 2009) (cap on annual liability (Final Rule)).

[10] See 71 FR 648 (Jan. 5, 2006) (Notice providing Interim Guidance regarding 2005 Extension Act revisions to TRIA); 71 FR 27564 (May 11, 2006) (Interim Final Rule concerning 2005 Extension Act revisions); 71 FR 50341 (Aug. 25, 2006) (Final Rule concerning 2005 Extension Act revisions).

Act of 2007 (Pub. L. 110–160, 121 Stat. 1839) (2007 Reauthorization Act) was enacted, extending the Program through December 31, 2014. In addition to extending the duration of the Program, the 2007 Reauthorization Act modified the "act of terrorism" definition to eliminate the requirement that the act of terrorism be committed by an individual acting on behalf of any foreign person or interest, revised the insurer deductible, Program Trigger, and Federal share provisions of the Program, modified the recoupment provisions, and established various reporting requirements. Again, rules implementing these changes were issued by Treasury.[11]

Most recently, on January 12, 2015, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act),[12] reauthorizing the Program until December 31, 2020. The 2015 Reauthorization Act reformed various operational matters respecting the Program. These reforms include technical changes to the disclosure requirements, certain definitional changes, and modifications involving the amount and application of the Program Trigger, the Federal share of compensation, the recoupment percentage amount, and the insurance marketplace aggregate retention amount—all of which require modifications to the existing Program regulations.[13] In addition, the 2015 Reauthorization Act mandates other actions by Treasury and changes to TRIP that in turn necessitate changes to the existing Program regulations, requiring Treasury: (1) To issue final rules following the submission of a mandated report on improving the certification process;[14] (2) to collect certain information from insurers participating in the Program so that Treasury can complete periodic reports concerning the effectiveness of the Program and trends over time; and (3) to define small insurers by regulation, conduct periodic studies concerning any competitive challenges small insurers face in the terrorism risk insurance marketplace, and submit periodic reports on the findings.

Additionally, Treasury proposes new regulations respecting civil penalties (as provided for in TRIA) and the final netting of claims for a calendar year,[15] and implements certain other changes to eliminate provisions that are redundant in light of the passage of time, and/or to clarify the intent of the regulation.

Finally, Treasury poses several questions regarding the role of self-insurance arrangements and captive insurers in the Program, to which we seek comments to use in formulating a proposed rule in the near future concerning the participation of such arrangements in the Program.

The changes are explained in further detail below in the context of the proposed rules. For the convenience of the reader, Treasury is restating Part 50 in its entirety. However, this preamble addresses only those portions of Part 50 that are being amended. For discussion of Part 50 as previously codified, see the relevant **Federal Register** notices mentioned above.

II. The Proposed Rules

This proposed rule would strike and replace existing 31 CFR part 50 in its entirety, with the principal changes being to: (1) Generally revise 31 CFR part 50 to incorporate new financial and operational provisions for the Program contained in the 2015 Reauthorization Act; (2) add a new Subpart F to Part 50, which comprises Treasury's regulations concerning data collection; and (3) add a new Subpart G to Part 50, which comprises Treasury's regulations concerning the certification process. The proposed rules also add certain definitions in § 50.4 of Subpart A, a new § 50.76 addressing the previously proposed Final Netting rule, and a new § 50.82 addressing Civil Penalties. Other changes providing further clarification and eliminating redundancies are identified and discussed further below.

A. Overview

The Program was established in 2002, and has been reauthorized and extended on three occasions since then—in 2005, 2007, and most recently in January 2015. Each reauthorization and extension changed the operational provisions of the Program. In prior rulemakings, Treasury has sought to address such changes by incorporating provisions in the rules reflecting the different approaches depending upon the timing of any particular certified act of terrorism. While this approach has captured the relevant changes over time, it has resulted in a set of rules that incorporated numerous exceptions and qualifications. As a result, many existing provisions in the rules have been rendered effectively obsolete given the passage of time. Accordingly, Treasury is taking the opportunity during this rulemaking to propose a more general revision to Part 50, which describes the Program as it currently operates and will operate through 2020, without cumbersome reference to differences that were in effect prior to the effective date of the proposed rules. The revised rules remain subject to the existing savings provision (proposed § 50.6, current § 50.7) which confirms that, to the extent prior applicable regulations or guidance remain relevant for any reason at some point in the future, such provisions will continue to provide the rule of decision, and to provide a safe harbor, for insurers participating in the Program.

In addition to instituting changes to the basic financial terms that define the operation of the Program, the 2015 Reauthorization Act also requires Treasury to prepare certain reports concerning the operation of the Program, based upon data which Treasury shall collect, and to generate rules concerning improvements to the certification process. The proposed rules define a data collection process that will allow Treasury to collect the information necessary to satisfy the reporting requirements contained in the 2015 Reauthorization Act, in a format consistent with the manner in which insurers presently collect and report financial data, including data concerning terrorism risk insurance. These rules, and the specific data collection elements, which remain under development and subject to further refinement, are the result of extensive and ongoing interaction among Treasury, industry stakeholders, and state regulators.

The proposed rules concerning the certification process follow Treasury's October 2015 Certification Report. As set forth in the Certification Report, Treasury has determined that it is not practical to establish detailed rules—and particularly a timeline—governing a process that will necessarily vary from case to case, although Treasury's proposed rules do identify the relevant timing considerations as to when an act is eligible for certification by the

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[11] See 73 FR 5264 (Jan. 29, 2008) (Notice providing Interim Guidance regarding 2007 Reauthorization Act revisions); 73 FR 53359 (Sept. 16, 2008) (Interim Final Rule regarding 2007 Reauthorization Act revisions); 74 FR 18135 (Apr. 21, 2009) (Final Rule regarding 2007 Reauthorization Act revisions).

[12] Public Law 114–1, 129 Stat. 3.

[13] Treasury issued a Notice providing interim guidance concerning application of disclosure requirements in light of the enactment of the 2015 Reauthorization Act. 80 FR 6656 (Feb. 6, 2015).

[14] U.S. Department of the Treasury, *The Process for Certifying an "Act of Terrorism" under the Terrorism Risk Insurance Act of 2002* (October 2015) (Certification Report), *available at http://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2015%20Report%20on%20the%20Certification%20Process%20under%20the%20Terrorism%20-%20Production%20Version.pdf.*

[15] The regulations relating to final netting of claims are a modification of a Final Netting of Payments rule proposed and subject to comment in 2010 but not adopted by Treasury. See 75 FR 45563 (Aug. 3, 2010).

Secretary as an act of terrorism. In addition, the certification process can and generally should incorporate improved notification and communication by Treasury to the public once an act is under consideration for certification by the Secretary as an "act of terrorism." The proposed rules provide for public notifications and updates, as may be necessary, concerning the existence, continuation, and conclusion of the certification process.

Finally, the proposed rules also include a modified version of a previously proposed Final Netting Rule, which was subject to comment in 2010 but never adopted as a final rule by Treasury, and a rule respecting civil penalties—authorized by TRIA as originally enacted in 2002, but never previously proposed by Treasury.

Treasury seeks comment on all aspects of the proposed rules from interested persons and entities.

B. Description of the Proposed Rules

The changes to the existing rules as provided for in these proposed rules, on a section by section basis, are as follows:

Subpart A—General Provisions

The proposed change to § 50.1 adds the statutory authority extended under the 2015 Reauthorization Act. The proposed change in § 50.2 implements the provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act authorizing the Federal Insurance Office to assist the Secretary of the Treasury in the administration of TRIP.[16]

There are a number of changes to Program definitions. The proposed change in § 50.4(b) implements Section 105 of the 2015 Reauthorization Act, providing that the Secretary will consult with the Attorney General of the United States and Secretary of Homeland Security prior to certifying an act as an act of terrorism, rather than reaching a certification decision in concurrence with the Secretary of State and the Attorney General.

The proposed change in § 50.4(c)(2) implements the rule of construction in Section 106 of the 2015 Reauthorization Act, which provides that control for purposes of determining if an insurer is an "affiliate" under TRIA is not established solely because an entity acts as an attorney-in-fact for a another entity that is a reciprocal insurer.

The proposed changes in § 50.4(f) (defining "attorney-in-fact") and § 50.4(x) (defining "reciprocal insurer") are required in light of the new rule of construction in § 50.4(c)(2) required by Section 106 of the 2015 Reauthorization Act, discussed above. In both cases, Treasury has relied upon state law in developing these definitions.

The proposed change in § 50.4(g) defines "captive insurer" for purposes of implementing TRIA. This definition is being adopted now in order to give effect to the proposed exclusion in § 50.4(z) of captive insurers from the definition of "small insurer," and because captive insurers might be subject to different data collection protocols than other insurers, both discussed further below. Treasury continues to reserve subpart E of 31 CFR part 50 for further regulations concerning the participation of captive insurers in the Program.

The proposed change in § 50.4(m) incorporates the changes to the insurance marketplace aggregate retention amount over the period from 2015 to 2020, as provided for in Section 104 of the 2015 Reauthorization Act. This section sets the insurance marketplace aggregate retention amount at $27.5 billion, and requires it to increase by $2 billion every calendar year beginning with the year of enactment of the 2015 Reauthorization Act, until the amount reaches $37.5 billion, which will occur in 2019. Section 50.4(m) also specifies the manner in which Treasury proposes to determine the insurance marketplace aggregate retention amount for any calendar year beginning with 2020 and publicize such determinations, in accordance with requirement in Section 104 of the 2015 Reauthorization Act to issue rules for determining and publicizing this amount. The approach follows the direction in the 2015 Reauthorization Act that the insurance marketplace aggregate retention amount for any calendar year after the Program Trigger reaches $37.5 billion should be based upon the average of insurer deductibles during the three prior calendar years. It calculates this figure by reference to the data that Treasury will be collecting concerning insurer participation in the Program under proposed § 50.51.

The proposed change in § 50.4(n) is for clarification purposes only and is not intended to change the prior approach, which was to confirm that outside the United States (as distinguished from inside the United States) insured losses under TRIP involving an air carrier (as defined in 49 U.S.C. 40102) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States) are limited to the insurance coverage provided to the air carrier or vessel.

The proposed change in § 50.4(v) incorporates the changes to the amount of the Program Trigger over the period from 2015 to 2020, and specifies that the Program Trigger is based on all acts of terrorism certified by the Secretary in a particular calendar year (as distinguished from each "Program Year"), as provided for in Section 103 of the 2015 Reauthorization Act.

The proposed change in § 50.4(z) defines "small insurer" as required under Section 112 of the 2015 Reauthorization Act for purposes of a study of small insurers participating in the Program that Treasury must conduct. The purpose of the study is to identify any competitive challenges small insurers face in the terrorism risk insurance marketplace—including whether the increase in amount of the Program Trigger has affected small insurers. Treasury proposes a sliding scale definition of a "small insurer"—which tracks the increasing amount of the Program Trigger in the years from 2015 to 2020—by reference to both the insurer's direct earned premium (for TRIA-eligible lines) and policyholder surplus. Treasury has selected this proposed definition of "small insurer" for purposes of TRIP in light of the manner in which the Program operates.

An insurer's deductible under TRIP is 20 percent of the insurer's direct earned premium in the prior calendar year. Assuming the Program Trigger has been met—an amount of aggregate insured losses in excess of a defined amount in a particular calendar year (starting with $100 million in 2015 and ultimately increasing to $200 million by 2020)—Treasury will make payment of the Federal share for amounts in excess of any particular insurer's deductible.

The Program Trigger is based upon the insured losses of all participants in the Program and, therefore, a particular insurer with losses below the Program Trigger but above its deductible may still be entitled to payments of the Federal share, so long as insured losses of all participating insurers are sufficient to satisfy the Program Trigger. A different situation, however, could be presented if losses arising from a certified act of terrorism are largely or entirely sustained by a single insurer whose deductible is below the Program Trigger. In this situation, an insurer with a deductible of (for example) $20 million, and total losses of $50 million would not be entitled to payments under the Program (notwithstanding satisfaction of its deductible) if total insured losses across all Program participants in this hypothetical were, say, only $60 million in total.

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[16] 31 U.S.C. 313(c)(1)(D).

If an insurer's direct earned premium is five times the Program Trigger amount (for example, at $500 million in 2015) that insurer's deductible would at least exceed the Program Trigger, even if all of the insured losses in question (a theoretical if unlikely possibility) resulting from a certified act of terrorism were sustained only by that insurer. Such an insurer would be paid any Federal share above its deductible, since that insurer's deductible would be equal to the Program Trigger for the calendar year in question. If an insurer's direct earned premium is less than five times the Program Trigger amount, however, the possibility remains that an insurer might exceed its deductible but not be entitled to payments of the Federal share because the Program Trigger has not been met. The impact upon such an insurer in this situation, however, would be lessened to the extent the insurer's policyholder surplus was sufficient to satisfy any amounts that would not be reimbursed in such a scenario under the Program.

Since the purpose of studying small insurers under TRIP is to assess competitive challenges small insurers face in the terrorism risk insurance marketplace, the definition should be with reference to the insurer's deductible and policyholder surplus as compared with the Program Trigger threshold. Accordingly, Treasury's proposed definition specifies that a "small insurer" is an insurer with prior-year direct earned premium of less than five times the Program Trigger amount, and with policyholder surplus at the end of the prior calendar year that is also less than five times the Program Trigger amount. Insurers larger than this—whose losses alone could trigger the Program, or whose surplus is well above the Program Trigger threshold—cannot be considered "small" for these purposes.

Finally, captive insurers (as defined in this proposed rule) are exempted from the small insurer definition. Captive insurers typically insure only the exposures of corporate parents or of other related policyholders, and thus while these captives might otherwise meet the proposed definition of "small insurer" the establishment of a captive insurer is a risk management decision that is not compelled by TRIP, and the corporate parent or other source of strength of the captive insurer is ultimately positioned to manage any potential risk presented to the captive by its participation in TRIP. Any issue relating to the size of captive insurers as it relates to TRIP should be assessed in the context of regulations specifically applicable to such captives.

The balance of the proposed changes to Subpart A would delete provisions that are redundant or unnecessary on account of the passage of time, would substitute language to clarify Treasury's intent, or would implement other changes required by the 2015 Reauthorization Act (*e.g.*, the movement from the term "Program Year" to the term "calendar year" to describe the operation of TRIP).

Subpart B—Disclosures as Conditions for Federal Payment

The proposed change to § 50.12 clarifies the manner in which the portion or percentage of the annual premium attributable to terrorism risk insurance should be disclosed to policyholders or potential policyholders, to ensure that the actual dollar value of the premium is evident.

The proposed changes to § 50.13 implement Section 106(2)(A) of the 2015 Reauthorization Act, which deleted the previous requirement that the general disclosure requirements respecting insured losses (as found in § 50.10) apply at the time of policy purchase, as well as at the time of offer and renewal.

The proposed change to § 50.15 provides expanded guidance for ensuring compliance with the requirement that the cap disclosure be provided at the time of offer, purchase, and renewal. It clarifies that a cap disclosure at the time of purchase needs only to be provided in the event that terrorism risk coverage is actually purchased, and establishes that the disclosure at that time may refer back to the disclosure made at the time of offer or renewal. This guidance is otherwise consistent with the general approach of the 2015 Reauthorization Act to notification requirements.

The balance of the proposed changes to Subpart B would delete provisions that are redundant or unnecessary on account of the passage of time, substitute language to clarify Treasury's intent, or implement other minor changes that conform the existing regulations to the requirements of the 2015 Reauthorization Act.

Subpart C—Mandatory Availability

The proposed changes to Subpart C would delete provisions that are redundant or unnecessary on account of the passage of time, substitute language to clarify Treasury's intent, or implement other minor changes that conform the existing regulations to the requirements of the 2015 Reauthorization Act, and do not seek to establish any further substantive changes.

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds

No substantive changes have been proposed to Subpart D.

Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Treasury continues to reserve Subpart E for future additional rules addressing the participation in TRIP of self-insurance arrangements and captive insurers. Comments concerning the participation in the Program of self-insurance arrangements and captive insurers are sought in Section III, below.

Subpart F—Data Collection

Subpart F is new. The proposed rules establish procedures for collection of data as mandated by Section 111 of the 2015 Reauthorization Act, and also address the collection of data by Treasury in connection with the claims process, in the event that an act of terrorism has been certified. A general explanation of each section of new Subpart F follows.

Proposed § 50.50 states that Treasury may generally request information from insurers in connection with the Program, as part of its administration and implementation of the program.

Proposed § 50.51 establishes rules concerning the annual collection of data by Treasury concerning the effectiveness of the Program, as mandated by Section 111 of the 2015 Reauthorization Act. A reporting deadline each year of March 1 is proposed. Treasury has proposed this reporting deadline to provide insurers with sufficient time to compile and provide the necessary information and ensure it is true and correct. A March 1 deadline is also consistent with other annual reporting requirements insurers must meet. The subject matter of the data to be collected is identified consistent with the requirements of Section 111 of the 2015 Reauthorization Act. The rule further specifies that the data will be collected electronically by Treasury, through various forms and web portals identified on Treasury's Web site. The reporting forms and portals, which will identify the specific data elements that insurers will be required to provide on an annual basis, are under development and will be published for comment separately. Given that insurers collect and report data in a variety of ways, the precise data elements, instructions, and methods of reporting may vary by industry segment. Treasury will publish multiple forms if it identifies a need and will provide clear guidance for insurers to determine the appropriate forms to submit. The proposed rule also provides for periodic reevaluation of and revisions to the data elements to be collected, so that ongoing refinements to the process can be implemented. Treasury has proposed a 90 day notice period for any refinements, to provide insurers with sufficient time to update any systems they will need to change to facilitate collection of the new data.

The proposed rule also permits Treasury to issue supplemental data requests to participating insurers to the extent Treasury determines it requires additional or clarifying information in order to analyze the effectiveness of the Program. Like the potential revision to the annual data element requirements, this is an additional tool for Treasury to manage the information it is collecting to ensure that it is able to evaluate the effectiveness of the Program, as required by the 2015 Reauthorization Act. The timeframe and manner of response to any such supplemental data request will be specified by Treasury in the request.

The proposed rule permits—but does not require—Treasury to exclude small insurers, as defined in proposed § 50.4(z), from the annual data request. Section 111 of the 2015 Reauthorization Act requires the Secretary to collect from insurers participating in the Program such information as the Secretary considers appropriate to analyze the overall effectiveness of the Program. Treasury may gather all of the information appropriate for analyzing the effectiveness of the Program without requiring collection of information from every single participating insurer. The statutory text does not require the Secretary to require all insurers participating in the Program to submit information, nor does it require that all insurers be required to submit the same information. Rather, the statute requires the Secretary to require insurers to submit such information as the Secretary considers appropriate. Therefore, the Secretary may sometimes exempt a small insurer or class of small insurers if such exemption would not interfere with Treasury's ability to analyze the effectiveness of the Program. It would not be appropriate to extend such an exemption to insurers that do not qualify as small insurers, as such an exemption would be more likely to have a negative impact on Treasury's ability to analyze the effectiveness of the program.

Proposed § 50.52 addresses the collection of data relating to small insurers, as defined in proposed § 50.4(z), in support of the studies of small insurers mandated by the 2015 Reauthorization Act. The data elements specified in the proposed § 50.52 are those specified in Section 112 of the 2015 Reauthorization Act.

Proposed § 50.53 establishes rules for the collection of data by Treasury once an act has been certified as an act of terrorism, under Treasury's general authority to under Section 104(a) of the Act to investigate claims under the Program and prescribe regulations to effectively administer the Program and ensure that all insurers that participate in the Program are treated equally. In order to effectively administer the Program, Treasury requires information regarding losses resulting from a certified act of terrorism and has accordingly previously adopted rules requiring the submission of such information. The current rules (§ 50.52) do not require insurers to begin reporting information to Treasury concerning losses resulting from a certified act of terrorism until a particular insurer's paid and incurred losses reach 50 percent of the insurer's TRIA deductible. However, given the size of the deductibles of some participating insurers, this could result in losses being paid and reserved by industry as a whole in an amount far in excess of the $100 million Program Trigger before Treasury has obtained any specific information respecting losses resulting from the act of terrorism as they are incurred. This new section provides for periodic reporting of claims and loss information associated with the act of terrorism in question, so that Treasury may evaluate on a continuing basis the amount of loss associated with the certified act of terrorism, and be prepared in advance to respond to claims for payment of the Federal share of compensation in a timely fashion. The data elements sought under this rule are consistent with those that each participating insurer will be generating in connection with its own establishment, review, and resolution of claims as they are processed. As in other situations involving data collection, the rule specifies that Treasury may also seek loss figures and estimates from other sources in order to inform its analysis and projections.

Finally, proposed § 50.54 implements the requirements found in Section 111 of the 2015 Reauthorization Act, which recognize that the data that Treasury will need to collect from participating insurers may constitute proprietary information that is highly sensitive to the individual companies (and, potentially, underlying policyholders and claimants) from which it is obtained. The proposed rule provides for protection of such data from disclosure, although it does permit—pursuant to appropriate agreements—for the sharing of such information with other Federal agencies or state insurance regulatory authorities.

Subpart G—Certification

Subpart G is new. The proposed rules establish procedures applicable when Treasury is considering whether an act constitutes an "act of terrorism" within the meaning of TRIA.

The 2015 Reauthorization Act includes a requirement for Treasury to conduct and complete a study on the certification process, including examination of whether a timeline governing the certification process could be established, information that the Secretary would evaluate during the certification process, and the ability of the Secretary to provide guidance and updates to the public during the certification process. In the Certification Report, Treasury concluded that it would be impractical to establish very specific rules to define a process that will likely vary greatly in material respects depending upon the act and its consequences. Treasury determined, however, that the certification process could be improved by periodic reporting to the public during the pendency of that process, which Treasury concluded should permit relevant stakeholders and the public at large to assess their positions as they might be affected by the Secretary's decision whether to certify an act as an act of terrorism. Treasury also addressed in the Certification Report the types of information that it might need to evaluate during the certification process. Under the 2015 Reauthorization Act, Treasury must issue final rules governing the certification process within 9 months after the Certification Report, including a timeline for when an act is eligible for certification by the Secretary as an act of terrorism. These proposed rules implement Treasury's recommendations in its Certification Report and the requirements of the 2015 Reauthorization Act.

Proposed § 50.60 sets forth the general parameters of the certification process, as required under TRIA, and as modified by the 2015 Reauthorization Act, including the requirement in paragraph (b) that from a timing standpoint an act is eligible for certification once the Secretary has consulted with the Attorney General of the United States and the Secretary of Homeland Security.

Proposed § 50.61 addresses the commencement of the certification process and public communication concerning the process. After the Secretary commences consideration of whether an act may be an act of terrorism under TRIA, Treasury will publish a statement and a notice in the **Federal Register** advising that the act is under consideration for certification. Such notice could also reflect that it has been determined that a particular act is not under consideration as an act of terrorism. The proposed rule provides that such notice will be updated periodically by Treasury as long as the act is still under review for certification. In addition to indicating whether the act remains under consideration for certification, the proposed rule provides that Treasury may publish further information in connection with such notifications. Nothing in the proposed notification provisions, however, precludes the Secretary from certifying an act as an act of terrorism before any notification to the public.

Proposed § 50.62 establishes rules for the collection of data by Treasury in aid of the certification process. As explained in the Certification Report, Treasury may need to collect data from insurers, as well as from other entities in the insurance industry, in connection with its analysis of whether the insurance losses resulting from an act under consideration for certification as an act of terrorism meet the $5 million loss threshold under TRIA, which must be met before any act is eligible for certification as an act of terrorism.[17] This information may therefore be crucial for informing a certification decision. Accordingly, Treasury proposes this section under its general authority to promulgate rules for effective administration of the Program and its authority to issue rules governing the certification process pursuant to Section 107(e) of the 2015 Reauthorization Act. Treasury may need to rely upon insurers who have or project losses from the act in question in order to confirm whether the relevant loss threshold is or will be satisfied. An insurer that has such information may also self-report to Treasury, as further provided in the rule, and Treasury may also review other industry sources for such loss information.

Proposed § 50.63 provides for **Federal Register** notification and other communication of any certification decision, as well separate notifications to Congress and specified insurance supervisory authorities.

Subpart H—Claims Procedures

The proposed changes to § 50.70 (formerly § 50.50) implement the changes to the Federal share of compensation and Program Trigger amounts in the years from 2015 through 2020, as provided for in the 2015 Reauthorization Act.

Proposed § 50.76 addresses final netting. This rule was originally proposed by Treasury in 2010 and subject to comment but was not adopted by Treasury. See generally 75 FR 45563 (August 3, 2010). The intent of the proposed rule is to provide a process by which Treasury would close out its claims operation for insured losses from a particular calendar year. The proposed rule provides for some flexibility in how and when steps are taken to accomplish this in order to be able to effectively address future circumstances. Treasury has addressed certain of the comments that were received during the prior comment period by modifications to the proposed rule, and responds to certain of the comments that are not addressed by revisions to the proposed rule. Interested parties are invited to provide further comments respecting the proposed final netting rule during the current comment period.

Section 103(e)(4) of TRIA provides the Secretary with the sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall be accomplished. Based on that authority, the final netting rule provides the mechanism for final payments to be made by Treasury to insurers, or by insurers to Treasury, such that Treasury can close out its claims operation for insured losses for a given calendar year, once the Secretary has determined that claims for the Federal share of compensation shall be considered final.

The substantive modifications to the proposed rule as originally proposed in 2010 are to paragraph (b)(1)(v) (identifying the manner in which the Federal courts have been applying tort and contract statute of limitations as such decisions may be relevant to the final netting analysis) and paragraph (b)(1)(ix) (expressly requiring that if it is projected that the cap on annual liability will be reached, consideration shall be given as to whether any Final Netting Date should be set) are based on the comments that were previously received. Treasury concurs with the commenters that these are appropriate considerations for Final Netting. Treasury has not, however, revised the proposed rule in response to comments recommending that Treasury should not impose a commutation over the objection of the relevant insurer, or that Treasury should expressly obligate itself to reopen and/or extend the insurer's claim for the Federal share of compensation if the 20 percent exception threshold of increased compensation is met. Treasury makes payment of the Federal share of compensation pursuant to the terms of TRIA and not as a matter of contract, and TRIA leaves to the sole discretion of the Secretary—who must consider the impact of the Program upon taxpayers as well as upon the participating insurers—when claims shall become final. The considerations identified in the proposed rule as to whether and when a Final Netting Date should be set are appropriate and sufficiently identify the relevant considerations.

The balance of the proposed changes to the previously proposed Final Netting Rule text revise certain terminology previously used in the regulations, in order to distinguish the provisions from the new proposed rule, or to implement other technical changes that conform the existing regulations to the requirements of the 2015 Reauthorization Act, and do not seek to establish any substantive changes.

Subpart I—Audit and Investigative Procedures

The only substantive change to Subpart I (formerly Subpart G) is new § 50.82, addressing civil penalties in connection with TRIA. The authority for Treasury to impose civil penalties against an insurer in connection with the administration of TRIA is provided under Section 104(e) of the Act. The proposed rule tracks the statutory language as to the situations in which a civil penalty may be assessed, and provides (as required by the Act) for any penalty to be assessed only after proceedings on the record and after an opportunity is extended to the insurer in question for a hearing. Treasury previously considered a different penalty rule, addressing only certain conduct in connection with the Program; that proposed rule was withdrawn in light of comments that the authority generally available under Section 104(e) of the Act "cover[s] the landscape of potential offenses." 69 FR 39296, 39299–300 (June 29, 2004). This proposed rule is consistent with the statutory authority provided to Treasury under the Act.

The only substantive change from the civil penalty authority as identified in Section 104(e) of TRIA is with respect to the amount, which has been increased from not more than $1,000,000 as provided for in TRIA to not more than $1,325,000. This increase is based on the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, which requires (in Section 5 of that Act) that civil penalties be increased by the percentage difference in the Consumer Price Index (CPI) for June of the year in which the penalty was originally established (here, June 2002) versus June of year in which the penalty is readjusted, or June 2015. In June 2002, the CPI was 179.9, and in June 2015 the CPI was 238.638—an increase of 58.738, which is a percentage increase from June 2002 of 32.65%. This results in an increased penalty of $1,326,503 which, according to Section 4 of the Act, is to be rounded to the nearest $25,000 in the case of penalties in excess of $200,000. This results in the current figure of $1,325,000.

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[17] TRIA, Section 102(1)(B)(ii).

Subpart J—Recoupment and Surcharge Procedures

The principal changes in Subpart J are in connection with proposed § 50.90 (formerly § 50.70), and are based upon changes to the Program adopted in the 2015 Reauthorization Act—*i.e.,* the increase, from 133 percent to 140 percent, in the amount of terrorism loss risk-spreading premiums to be applied to any mandatory recoupment amount, and the revised schedule for the collection of terrorism loss risk-spreading premiums, depending upon the timing of any certified act of terrorism. The balance of the proposed changes to Subpart J make certain clarifying changes and otherwise conform the existing regulations to the requirements of the 2015 Reauthorization Act, and do not seek to establish any further substantive changes.

Subpart K—Federal Cause of Action; Approval of Settlements

The proposed Rule incorporates certain changes and clarifications to Subpart K, involving the Federal Cause of Action and Approval of Settlements by Treasury. These changes are designed to enhance Treasury's ability to evaluate and manage significant claims that could have a material impact upon Treasury's payment of the Federal share of compensation.

Proposed § 50.100(b) is proposed for the sake of completeness and tracks the existing requirement identified in TRIA that once the Secretary certifies an act of terrorism the Judicial Panel on Multidistrict Litigation shall designate one or more district courts to exercise exclusive jurisdiction of claims arising out of the certified act of terrorism. See TRIA, Section 107(a)(4).

Proposed § 50.102 (formerly § 50.82) includes certain clarifying language confirming that the advance settlement approval requirement extends to claims that may ultimately be determined to fall within an insurer's deductible. Insured losses are ultimately submitted to Treasury as the basis for payment of the Federal share on an aggregate basis and, therefore, Treasury has previously recognized that the advance settlement approval requirement logically extends to such cases. See 69 FR 44932, 44936 (July 29, 2004). This proposed change thus only clarifies existing guidance.

Proposed § 50.103 (formerly 50.83) contains certain clarifying language respecting the submission of information Treasury seeks in support of settlement approval.

Proposed § 50.104 (formerly § 50.84) adds a provision recognizing that while the Government's subrogation rights arising from TRIP payments may not be waived by a participating insurer, those rights might not be enforced by the Government in an appropriate situation. While the general regulatory prohibition against impairing the subrogation rights of the United States remains in place, Treasury recognizes that there may be litigation situations—for example, when all parties involved may ultimately be seeking to have their losses reimbursed through claims for the Federal share of compensation—where a sensible resolution of the matter would be for the United States to forbear from exercising those rights as part of a prudent global settlement agreement that resolves the matter in question as to all parties. The proposed change provides the flexibility to consider such an approach in an appropriate case.

The balance of the proposed changes to Subpart K make certain clarifying changes or delete material that is now redundant or unnecessary, and do not seek to establish any substantive changes.

Subpart L—Cap on Annual Liability

The proposed changes in Subpart L incorporate language required by the 2015 Reauthorization Act, or conform the provisions to Treasury's other data collection authorities under Part 50.

III. Participation of Captive Insurers and Other Self-Insurance Arrangements in the Program: Request for Comments

Under Section 103(f) of TRIA, the Secretary "may apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities. . . ." Treasury has previously advised that state-licensed captive insurers participate in the Program by virtue of their status as licensed insurance entities, and has issued some guidance concerning that participation; however, Treasury has not issued any rules specifically concerning the participation of captive insurers in the Program. Treasury also has not issued any rules concerning the participation of "other self-insurance arrangements by municipalities and other entities" in the Program.

In anticipation of the development of rules concerning the participation of captive insurers and, potentially, other self-insurance arrangements in the Program, Treasury invites interested parties to provide comments concerning these issues. While interested parties are invited to address these matters generally, Treasury particularly invites responses to the following questions:

(1) What is the current role of captive insurers (both state-licensed entities and otherwise) in providing insurance in TRIP-eligible lines?

(2) Should captive arrangements that insure U.S.-based risks, other than those involving state-licensed insurers, participate in the Program? Upon what basis should such participation take place?

(3) Should separate rules address the criteria for which captives, of any type, qualify for reimbursement under the Program? In response to this question, please address whether and/or how the relatively small TRIP-eligible premiums of such insurers should affect their insurer deductible.

(4) Given the relatively small size of some captive insurers, should some assessment be made of their capital and claims paying ability in connection with their participation in the Program? If so, how should Treasury consider and address such issues?

(5) To what extent are captives being relied upon to insure so-called "trophy risks" that might be deemed to be subject to a heightened risk of terrorism?

(6) What is the current role of self-insurance arrangements in providing workers' compensation reimbursement for losses that could be subject to the Program?

(7) What is the current extent of self-insurance arrangements in other TRIA-eligible lines apart from workers' compensation insurance?

(8) Should self-insurance arrangements, apart from state-licensed captives, qualify for participation in the Program? Do self-insurers wish to participate in the Program? If self-insurers were to participate in the Program, how would such participation be structured, including in terms of

deductibles and potential liability for the recoupment of surcharges?

IV. Procedural Requirements

Executive Order 12866, "Regulatory Planning and Review." This rule is a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review," and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, Treasury must consider whether this rule, if promulgated, will have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). In this case, Treasury certifies that this Proposed Rule, if adopted, would likely not have a significant economic impact on a substantial number of small entities. Although the rule may affect a substantial number of small insurers, the economic impact is unlikely to be significant, for the reasons explained below.

Treasury has previously determined that regulations issued in connection with the Program do not have a significant economic impact on a substantial number of small entities. As noted previously, TRIA requires all insurers, regardless of size or sophistication, which receive direct earned premiums for commercial property and casualty insurance, to participate in the Program. The Act also defines property and casualty insurance to mean commercial lines of insurance, with certain specific exclusions, without any reference to the size or scope of the insurer. Thus, the economic impacts associated with the Program regulations flow from TRIA, and not from the prior regulations. Furthermore, the regulations that have been proposed and adopted in the past have sought to be consistent with the manner in which insurers already conduct their business, in an effort to minimize the impact of the Program's operation upon participants. All of these considerations apply with equal force in connection with the Proposed Rule.

This Proposed Rule may affect a substantial number of small entities. Existing Small Business Administration size regulations (see 13 CFR 121.201) define small entities within the direct property and casualty insurance sector as those with 1500 employees or less; however, this Proposed Rule (see proposed 31 CFR 50.4(z)) contains a definition of "small insurer" for purposes of the Program that is based upon the size of the insurer's policyholder surplus and direct earned premiums. Based upon either measurement, some "small entities" or "small insurers" will be subject to the Proposed Rule—just as such insurers are subject to the requirements of TRIA as enacted. For purposes of its Paperwork Reduction Analysis, below, Treasury has estimated that perhaps about 500 insurers will have lesser reporting burdens because they are "small insurers" that, although they write some amount of TRIP-eligible lines premium, will likely have less information to report because of the reduced scope of their operations (either geographically or in terms of lines of business, or both), or may otherwise be excused from more detailed requirements under the Proposed Rule.

Treasury has sought to tailor the Proposed Rule, including the aspects of the rule respecting data collection, to the manner in which insurance companies (including small insurers) typically operate, such that the Proposed Rule should not have a significant economic impact. This Proposed Rule would implement the reforms in the 2015 Reauthorization Act. The aspects of the rule respecting data collection address data that the Secretary has been charged under the 2015 Reauthorization Act to collect, including data that must be collected and analyzed to determine whether small insurers face competitive challenges in the terrorism risk insurance marketplace.

As discussed in the preamble, the Proposed Rule imposes certain requirements respecting the production of data that could affect the manner in which insurers, including small insurers, presently collect and maintain information. The rule has been proposed in a way that most insurers, including small insurers, should already be collecting and maintaining the data in question as part of their ordinary course of business, such that any additional costs will be occasioned by some reprogramming costs to permit the more efficient reporting of the requested data. Given the character of the information that is sought, Treasury believes that any such costs should be nominal, in light of existing obligations all insurers have to record and retain the information sought by Treasury. Nonetheless, and recognizing that the provisions of the Proposed Rule respecting data collection may impose some additional costs and burdens on small insurers, the Proposed Rule provides Treasury with the authority to excuse or modify the data collection requirements as applicable to small insurers. Treasury seeks information and comments on any costs, compliance requirements, or changes in operating procedures arising from application of the Proposed Rule on small entities or insurers, the size and characteristics of any small entity or insurer that you believe may be subject to that impact, and any ways in which you believe—consistent with the requirements of the 2015 Reauthorization Act—these aspects of the Proposed Rule could be modified to avoid or mitigate the impact that you identify.

Treasury seeks information and comments on the extent to which the Proposed Rule will affect small entities or insurers, the size and characteristics of any small entity or insurer that you believe may be subject to that impact, and any ways in which you believe—consistent with the requirements of the 2015 Reauthorization Act—these aspects of the Proposed Rule could be modified to avoid or mitigate the impact that you identify.

After reviewing the comments received during the public comment period, Treasury will consider whether to conduct additional regulatory flexibility analysis.[18]

Paperwork Reduction Act. The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to: Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the collection of information should be received by May 31, 2016.

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[18] Treasury notes that the proposed final netting rule was previously analyzed for purposes of the Regulatory Flexibility Act. 75 FR 45563, 45566 (August 3, 2010). As explained previously, the economic impact, if any, of the final netting rule would be most likely to fall upon large insurers which would be more likely to be subject to the termination of the claims process and the proposed commutation procedure. That economic impact on insurers would be if they were to receive less than a full Federal share of compensation that would be due in the absence of a Final Netting process. The Final Netting Date, as proposed, will be established long enough after the certified act of terrorism so that further significant loss development for reported losses is unlikely. The rule proposes to provide for commutation of remaining losses, and includes a provision that allows for a reopening of an insurer's claim for the Federal share of compensation if significant new claims are reported to the insurer subsequent to the Final Netting. The economic impact on all commercial property and casualty insurers (including any that might be small entities) should thus be minimal. Treasury invites any interested parties to comment, if they wish, as respects this prior analysis.

Treasury specifically invites comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility;

(b) the accuracy of the estimate of the burden of the collections of information, including the validity of the assumptions and the methods used (*see below*);

(c) ways to enhance the quality, utility, and clarity of the information collection;

(d) ways to minimize the burden of the information collection, including the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

Comments are being sought with respect to new collection of information in connection with (1) annual data requests; (2) claims data; (3) certification; and (4) final netting. As respects civil penalties, there is no data collection that would be generally applicable to responding parties in general, given the individual nature of the inquiry as respects an insurer that might be in violation of some aspect of the Program.

Annual Data Requests

Beginning in 2017, with respect to 2016 data, insurers would be required to submit annual data regarding their participation in the Program, pursuant to Section 111 of the 2015 Reauthorization Act and proposed 31 CFR 50.51. The proposed rule requires an annual data collection process which will continue from year to year as long as the Program remains in effect. The information sought by Treasury will comprise data elements that insurers currently collect or generate, although not necessarily grouped together the way in which insurers currently collect and evaluate the data. Annual data collections could involve as many as about 2,000 Program participants, although the data to be collected from at least some of the insurers could be more limited. For insurers reporting standard information, Treasury anticipates approximately 50 hours to collect, process and report the data, and approximately 25 hours for collection, processing and reporting data where more limited information is sought or available. The precise breakdown between these categories will likely vary depending upon the year in question and issues presented. For illustrative purposes, Treasury assumes that approximately 1,500 insurers may be subject to the standard information request, with perhaps 500 subject to a more limited request. Assuming this breakdown, the estimated annual burden would be 87,500 hours (1,500 insurers × 50 hours + 500 insurers × 25 hours).

Description of recordkeepers: Insurers as defined in 31 CFR 50.4.

Estimated number of recordkeepers: 2,000 insurers, potentially divided for illustrative purposes into 1,500 insurers with standard reporting obligations and 500 insurers with more limited reporting responsibilities.

Estimated frequency: Annually.

Average estimated recordkeeping burden: 50 hours per year per insurer, reducing to 25 hours per year per insurers with more limited reporting responsibility.

Total estimated recordkeeping burden: 87,500 hours per year.

This data collection burden is imposed by the 2015 Reauthorization Act which requires the Secretary to require insurers participating in the Program to submit information regarding insurance coverage for terrorism losses.

Claims Data

The data collection rules also propose reporting of claims data by insurers as losses are sustained by insurers in the ordinary course once there has been a certified act of terrorism. The claims data sought is in a form that will be generated by insurers in the ordinary course of their operations. Accordingly, the burden associated with the requirement should consist of generating monthly reports of losses from existing data as generated and maintained by insurers. The number of insurers with insured losses in connection with any act of terrorism will vary depending upon the size and nature of the certified act of terrorism, as will the time period during which claims information will need to be reported to Treasury. Accordingly, Treasury can only make a “best estimate” as to the burden presented, which is based upon the estimate that 100 insurers will have insured losses, and will need to report information on a monthly basis over, on average, a four-year period. It is anticipated that the reporting will require no more than 2 hours per month per insurer to generate the required report from existing data and submit it to Treasury. This results in an estimated burden for each certified act of terrorism of 9,600 hours (100 insurers × 2 hours × 48 months).

Description of recordkeepers: Insurers who have sustained insured losses, as defined in 31 CFR 50.4.

Estimated number of recordkeepers: 100.

Estimated Frequency: Monthly.

Average estimated recordkeeping burden: 2 hours.

Total estimated recordkeeping burden: 9,600 hours over a four-year period estimated to be necessary on average to report all insured losses.

Certification

The proposed rules associated with the certification process contemplate that if the Secretary is considering an act for certification as an act of terrorism Treasury may need to collect loss information and estimates directly from insurers in order to confirm that losses are above relevant loss thresholds. It is uncertain that this process would ever require reporting from more than 10 entities, which is the threshold under the Paperwork Reduction Act. Depending upon the circumstances, however, Treasury estimates that it is possible that it could seek loss information from as many as 20 insurers in connection with any individual certification process. The information that Treasury would seek would be generated by insurers during the ordinary course of their operations, although given the time-sensitive nature of the certification process the information sought from individual insurers could impose additional burdens on account of the need to generate the information in a more expedited fashion. Treasury estimates that the burden upon each insurer from which data is sought could amount to 15 hours per insurer. This results in an estimated burden for each act under consideration for certification as an act of terrorism of 300 hours (20 insurers × 15 hours).

Description of recordkeepers: Insurers who may have sustained insured losses as defined in 31 CFR 50.4.

Estimated number of recordkeepers: Up to 20.

Estimated Frequency: Once per certification process.

Average estimated recordkeeping burden: 15 hours.

Total estimated recordkeeping burden: Up to 300 hours.

Final Netting-Commutation

Treasury previously analyzed the potential burdens associated with the proposed Final Netting Rule. See 75 FR 45563, 45566 (August 3, 2010). As explained previously, the collection of information associated with Final Netting would be in connection with the commutation procedure proposed in § 50.76(d)(2). As in connection with the other matters addressed herein, the required information and process follows normal business procedures of insurers—here, in the fashion that they interact with their reinsurers. Information would include an insurer's justification for a final payment amount with necessary actuarial factors and methodology, and pertinent information regarding the insurer's business relationships and other reinsurance recoverables. Information must be supplied in enough detail to clearly show the expected future loss payments, how the present value amount has been determined, and reconciliation to the last Certification of Loss. Treasury will evaluate the submission in order to determine a final payment amount or (if applicable) an amount that must be repaid to Treasury. Utilizing, again, the estimate that perhaps 100 insurers might sustain insured losses in connection with any given act of terrorism, Treasury estimates that there might be 15 of those insurers who will be involved in a commutation after the determination of a Final Netting Date. Treasury estimates that an insurer would need 40 hours, on average, to assemble and analyze the relevant data (otherwise collected by the insurer in the ordinary course) and develop a submission to Treasury for commutation. The estimated total onetime burden would be 600 hours (15 insurers × 40 hours).

Description of recordkeepers: Insurers part of a commutation procedures, as defined in 31 CFR 50.76(d)(2).

Estimated number of recordkeepers: 15.

Estimated Frequency: Once per event.

Average estimated recordkeeping burden: 40 hours.

Total estimated recordkeeping burden: 600 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

List of Subjects

Insurance, Terrorism.

For the reasons stated in the preamble, the Department of the Treasury proposes to revise 31 CFR part 50 to read as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

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Sec.

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50.2 Responsible office.
50.3 Mandatory participation in program.
50.4 Definitions.
50.5 Rule of construction for dates.
50.6 Special rules for Interim Guidance safe harbors.
50.7 Procedure for requesting determinations of controlling influence.
50.8 Procedure for requesting general interpretations of statute.

Subpart B—Disclosures as Conditions for Federal Payment

50.10 General disclosure requirements.
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50.12 Clear and conspicuous disclosure.
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Subpart F—Data Collection

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50.100 Federal cause of action and remedy.
50.101 State causes of action preempted.
50.102 Advance approval of settlements.
50.103 Procedure for requesting approval of proposed settlements.
50.104 Subrogation.

Subpart L—Cap on Annual Liability

50.110 Cap on annual liability.
50.111 Notice to Congress.
50.112 Determination of *pro rata* share.
50.113 Application of *pro rata* share.
50.114 Data call authority.
50.115 Final amount.

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as amended by Public Law 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839 and Public Law 114–1, 129 Stat. 3 (15 U.S.C. 6701 note).

Subpart A—General Provisions

§ 50.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Public Law 107–297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, 119 Stat. 2660, the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839, and the Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114–1, 129 Stat. 3.

(b) *Purpose.* This part contains rules prescribed by the Department of the Treasury to implement and administer the Terrorism Risk Insurance Program.

(c) *Scope.* This part applies to insurers subject to the Act and their policyholders.

§ 50.2 Responsible office.

The office responsible for the administration of the Terrorism Risk Insurance Act in the Department of the Treasury is the Terrorism Risk Insurance Program Office within the Federal Insurance Office. The Treasury Assistant Secretary for Financial Institutions prescribes the regulations under the Act.

§ 50.3 Mandatory participation in program.

Any entity that meets the definition of an insurer under the Act is required to participate in the Program.

§ 50.4 Definitions.

For purposes of this part:

(a) *Act* means the Terrorism Risk Insurance Act of 2002 (as amended).

(b) *Act of terrorism*—(1) *In general.* The term *act of terrorism* means any act that is certified by the Secretary, in consultation with the Attorney General of the United States and the Secretary of Homeland Security:

(i) To be an act of terrorism;

(ii) To be a violent act or an act that is dangerous to human life, property, or infrastructure;

(iii) To have resulted in damage within the United States, or outside of the United States in the case of:

(A) An air carrier (as defined in 49 U.S.C. 40102) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States); or

(B) The premises of a United States mission; and

(iv) To have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(2) *Limitations.* The Secretary is not authorized to certify an act as an act of terrorism if:

(i) The act is committed as part of the course of a war declared by the Congress (except with respect to any coverage for workers' compensation); or

(ii) Property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(3) *Judicial review precluded.* The Secretary's certification of an act of terrorism, or determination not to certify an act as an act of terrorism, is final and is not subject to judicial review.

(c)(1) *Affiliate* means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer. An affiliate must itself meet the definition of insurer to participate in the Program.

(2)(i) For purposes of paragraph (c)(1) of this section, an insurer has control over another insurer for purposes of the Program if:

(A) The insurer directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other insurer;

(B) The insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or

(C) The Secretary determines, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer, even if there is no control as defined in paragraph (c)(2)(i) or (ii) of this section.

(ii) An entity, including any affiliate thereof, does not have control or exercise controlling influence over a reciprocal insurer under this section if, as of January 12, 2015, the entity was acting as an attorney-in-fact for the reciprocal insurer, provided that the entity does not, for reasons other than activities it may perform under the attorney-in-fact relationship, have control over the reciprocal insurer as otherwise defined under this section.

(3) An insurer described in paragraph (c)(2)(i)(A) or (B) of this section is conclusively deemed to have control.

(4) For purposes of a determination of controlling influence under paragraph (c)(2)(i)(C) of this section, if an insurer is not described in paragraph (c)(2)(i)(A) or (B) of this section, the following rebuttable presumptions will apply:

(i) If an insurer controls another insurer under the laws of a state, and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer that has control under state law exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(i)(C) of this section.

(ii) If an insurer provides 25 percent or more of another insurer's capital (in the case of a stock insurer), policyholder surplus (in the case of a mutual insurer), or corporate capital (in the case of other entities that qualify as insurers), and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer providing such capital, policyholder surplus, or corporate capital exercises a controlling influence over the management or policies of the receiving insurer for purposes of paragraph (c)(2)(i)(C) of this section.

(iii) If an insurer, at any time during a calendar year, supplies 25 percent or more of the underwriting capacity for that year to an insurer that is a syndicate consisting of one or more incorporated or individual unincorporated underwriters, and at least one of the factors in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer exercises a controlling influence over the syndicate for purposes of paragraph (c)(2)(i)(C) of this section.

(iv) If paragraphs (c)(4)(i) through (iii) of this section are not applicable, but two or more of the following factors apply to an insurer, with respect to another insurer, there is a rebuttable presumption that the insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(i)(C) of this section:

(A) The insurer is one of the two largest shareholders of any class of voting stock;

(B) The insurer holds more than 35 percent of the combined debt securities and equity of the other insurer;

(C) The insurer is party to an agreement pursuant to which the insurer possesses a material economic stake in the other insurer resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the other insurer;

(D) The insurer is party to an agreement that enables the insurer to influence a material aspect of the management or policies of the other insurer;

(E) The insurer would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of the other insurer's voting stock in the future upon the occurrence of an event;

(F) The insurer has the power to direct the disposition of more than 25 percent of a class of voting stock of the other insurer in a manner other than a widely dispersed or public offering;

(G) The insurer and/or the insurer's representative or nominee constitute more than one member of the other insurer's board of directors; or

(H) The insurer or its nominee or an officer of the insurer serves as the chairman of the board, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority in the other insurer.

(5) An insurer that is not described in paragraph (c)(2)(i) or (ii) of this section may request a hearing in which the insurer may rebut a presumption of controlling influence under paragraph (c)(4)(i) through (iv) of this section or otherwise request a determination of controlling influence by presenting and supporting its position through written submissions to Treasury, and in Treasury's discretion, through informal oral presentations, in accordance with the procedure in § 50.7.

(6) An insurer's affiliates for a calendar year, for purposes of subpart H

of this part, shall be determined in accordance with the timing requirements laid out in § 50.75 of this part.

(d) *Aggregate Federal share of compensation* means the aggregate amount paid by Treasury for the Federal share of compensation for insured losses in a calendar year.

(e) *Assessment period* means a period, established by Treasury, during which policyholders of property and casualty insurance policies must pay, and insurers must collect, the Federal terrorism policy surcharge for remittance to Treasury.

(f) *Attorney-in-fact* means a person or entity appointed by the subscribers or members of a reciprocal insurer to act for and bind the reciprocal insurer under relevant state law for the benefit of its subscribers or members.

(g) *Captive insurer* means an insurer licensed under the captive insurance laws or regulations of any state.

(h) *Direct earned premium* means direct earned premium for all property and casualty insurance issued by any insurer for insurance against all losses, including losses from an act of terrorism, occurring at the locations described in section 102(5)(A) and (B) of the Act.

(1) *State-licensed or admitted insurers.* For a state licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for property and casualty insurance reported by the insurer on column 2 of the Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14).

(i) Premium information as reported to state regulators through the NAIC should be included in the calculation of direct earned premiums for purposes of the Program only to the extent it reflects premiums for property and casualty insurance issued by the insurer against losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(ii) Premiums for personal property and casualty lines of insurance (insurance primarily designed to cover personal, family or household risk exposures, with the exception of insurance written to insure 1 to 4 family rental dwellings owned for the business purpose of generating income for the property owner), or premiums for any other insurance coverage that does not meet the definition of property and casualty insurance, should be excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty lines of insurance coverage that includes incidental coverage for commercial purposes are primarily personal coverage, and therefore premiums may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of this section, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage. Property and casualty insurance against losses occurring at locations other than the locations described in section 102(5)(A) and (B) of the Act, or other insurance coverage that does not meet the definition of property and casualty insurance, but that includes incidental coverage for commercial risk exposures at such locations, is primarily not commercial, and therefore premiums for such insurance may also be fully excluded by an insurer from the calculation of direct earned premium. For purposes of this section, property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act is incidental if less than 25 percent of the total direct earned premium for the insurance policy is attributable to coverage at such locations. Also for purposes of this section, coverage for commercial risk exposures is incidental if it is combined with coverages that otherwise do not meet the definition of property and casualty insurance and less than 25 percent of the total direct earned premium for the insurance policy is attributable to the coverage for commercial risk exposures.

(iv) If an insurance policy covers both commercial and personal property and casualty exposures, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components in order to ascertain direct earned premium. If a policy includes insurance coverage that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, but also includes other coverage, insurers may allocate the premiums in accordance with the proportion of risk attributable to the components in order to ascertain direct earned premium.

(2) *Insurers that do not report to NAIC.* An insurer that does not report to the NAIC, but that is licensed or admitted by any state (such as certain farm or county mutual insurers), should use the guidance provided in paragraph (h)(1) of this section to assist in ascertaining its direct earned premium.

(i) Direct earned premium may be ascertained by adjusting data maintained by such insurer or reported by such insurer to its state regulator to reflect a breakdown of premiums for commercial and personal property and casualty exposure risk as described in paragraph (h)(1) of this section and, if necessary, re-stated to reflect the accrual method of determining direct earned premium versus direct premium.

(ii) Such an insurer should consider other types of payments that compensate the insurer for risk of loss (contributions, assessments, etc.) as part of its direct earned premium.

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium by pricing separately its premium for insurance that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(4) *Federally approved insurers.* A federally approved insurer, defined under section 102(6)(A)(iii) of the Act, should use a methodology similar to that specified for eligible surplus line carrier insurers in paragraph (h)(3) of this section to calculate its direct earned premium. Such calculation should be adjusted to reflect the limitations on scope of insurance coverage under the Program (*i.e.,* to the extent of Federal approval of property and casualty insurance in connection with maritime, energy or aviation activities).

(i) *Direct written premium* means the premium information for property and casualty insurance that is included by an insurer in column 1 of the Exhibit of Premiums and Losses of the NAIC Annual Statement or in an equivalent reporting requirement. The Federal terrorism policy surcharge is not included in amounts reported as direct written premium.

(j) *Discretionary recoupment amount* means such amount of the aggregate Federal share of compensation in excess of the mandatory recoupment amount that the Secretary has determined will be recouped pursuant to section 103(e)(7)(D) of the Act.

(k) *Federal Insurance Office* means the Federal Insurance Office within the U.S. Department of the Treasury.

(l) *Federal terrorism policy surcharge* means the amount established by Treasury under Subpart J of this Part that is imposed as a policy surcharge on property and casualty insurance policies, expressed as a percentage of the written premium.

(m) *Insurance marketplace aggregate retention amount* means an amount for a calendar year as calculated under section 103(e)(6) of the Act.

(1) For calendar years beginning with 2015 through 2019, such amount is the lesser of the aggregate amount, for all insurers, of insured losses once there has been a Program Trigger Event during the calendar year and:

(i) For calendar year 2015: $29,500,000,000;

(ii) For calendar year 2016: $31,500,000,000;

(iii) For calendar year 2017: $33,500,000,000;

(iv) For calendar year 2018: $35,500,000,000; and

(v) For calendar year 2019: $37,500,000,000.

(2) For calendar years beginning with 2020 and any calendar year thereafter as may be necessary, such amount is the lesser of the aggregate amount, for all insurers, of insured losses once there has been a Program Trigger Event during the calendar year and the annual average of the sum of insurer deductibles for all insurers for the prior 3 years, to be calculated by taking

(i) the total amount of direct earned premium reported by insurers to Treasury pursuant to section 50.51 for the three calendar years prior to the calendar year in question, and then dividing that figure by three; and

(ii) Multiplying the resulting three-year average figure by 20%.

(3) Beginning in 2020, Treasury shall publish in the **Federal Register** the insurance marketplace aggregate retention amount for that calendar year no later than April 30, 2020, and by every April 30 thereafter for any subsequent calendar years as necessary. To the extent the Secretary certifies an act as an act of terrorism prior to April 30 of any calendar year after 2019, Treasury will publish the relevant insurance marketplace aggregate retention amount as soon as practicable thereafter.

(n) *Insured loss.* (1) The term insured loss means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss:

(i) Occurs within the United States;

(ii) Occurs to an air carrier (as defined in 49 U.S.C. 40102), or to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; however, to the extent a loss occurs to such an air carrier or vessel outside the United States, the insured loss does not include losses covered by third party insurance contracts that are separate from the insurance coverage provided to the air carrier or vessel; or

(iii) Occurs at the premises of any United States mission.

(2) The term insured loss includes reasonable loss adjustment expenses, incurred by an insurer in connection with insured losses, that are allocated and identified by claim file in insurer records, including expenses incurred in the investigation, adjustment, and defense of claims, but excluding staff salaries, overhead, and other insurer expenses that would have been incurred notwithstanding the insured loss.

(3) The term insured loss does not include:

(i) Punitive or exemplary damages awarded or paid in connection with the Federal cause of action specified in section 107(a)(1) of the Act. The term "punitive or exemplary damages" means damages that are not compensatory but are an award of money made to a claimant solely to punish or deter; or

(ii) Extra-contractual damages awarded against, or paid by, an insurer; or

(iii) Payments by an insurer in excess of policy limits.

(o) *Insurer* means any entity, including any affiliate of the entity, that meets the following requirements:

(1)(i) The entity must fall within at least one of the following categories:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any state (including, but not limited to, state licensed captive insurance companies, state licensed or admitted risk retention groups, and state licensed or admitted farm and county mutuals) and, if a joint underwriting association, pooling arrangement, or other similar entity, then the entity must:

(*1*) Have gone through a process of being licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the state's insurance regulator, which process generally applies to insurance companies or is similar in scope and content to the process applicable to insurance companies;

(*2*) Be generally subject to State insurance regulation, including financial reporting requirements, applicable to insurance companies within the State; and

(*3*) Be managed independently from other insurers participating in the program;

(B) It is not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but is an eligible surplus line carrier listed on the NAIC Quarterly Listing of Alien Insurers;

(C) It is approved or accepted for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, but only to the extent of such Federal approval of property and casualty insurance coverage offered by the insurer in connection with maritime, energy, or aviation activity;

(D) It is a state residual market insurance entity or state workers' compensation fund; or

(E) As determined by the Secretary, it falls within any of the classes or types of captive insurers or other self-insurance arrangements by municipalities and other entities.

(ii) If an entity falls within more than one category described in paragraph (o)(1)(i) of this section, the entity is considered to fall within the first category within which it falls for purposes of the program.

(2) The entity must receive direct earned premium, except in the case of:

(i) State residual market insurance entities and state workers' compensation funds, to the extent provided in subpart D of this part; and

(ii) Other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities to the extent provided for in subpart E of this part.

(3) The entity must meet any other criteria as prescribed by Treasury.

(p) *Insurer deductible* means:

(1) For an insurer that has had a full year of operations during the calendar year immediately preceding the applicable calendar year, the value of an insurer's direct earned premiums during the immediately preceding calendar year, multiplied by 20 percent; and

(2) For an insurer that has not had a full year of operations during the immediately preceding calendar year, the insurer deductible will be based on data for direct earned premiums for the applicable calendar year multiplied by 20 percent. If the insurer does not have a full year of operations during the applicable calendar year, the direct earned premiums for the applicable calendar year will be annualized to determine the insurer deductible.

(q) *Mandatory recoupment amount* means the difference between the insurance marketplace aggregate retention amount for a calendar year and the uncompensated insured losses during such calendar year.

(r) *NAIC* means the National Association of Insurance Commissioners.

(s) *Person* means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a state or other governmental unit.

(t) *Professional liability insurance* means insurance coverage for liability arising out of the performance of professional or business duties related to a specific occupation, with coverage being tailored to the needs of the specific occupation. Examples include abstracters, accountants, insurance adjusters, architects, engineers, insurance agents and brokers, lawyers, real estate agents, stockbrokers, and veterinarians. For purposes of this definition, professional liability insurance does not include directors and officers liability insurance.

(u) *Program* means the Terrorism Risk Insurance Program established by the Act.

(v) *Program Trigger Event* means a certified act of terrorism within a calendar year that results in aggregate industry insured losses, either on its own or in combination with any other certified act(s) of terrorism having previously taken place in the same calendar year, exceeding:

(1) $100,000,000 with respect to calendar year 2015 insured losses;

(2) $120,000,000 with respect to calendar year 2016 insured losses;

(3) $140,000,000 with respect to calendar year 2017 insured losses;

(4) $160,000,000 with respect to calendar year 2018 insured losses;

(5) $180,000,000 with respect to calendar year 2019 insured losses; or

(6) $200,000,000 with respect to calendar year 2020 insured losses and with respect to any calendar year thereafter.

(w) *Property and casualty insurance* means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance, and:

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 22—Aircraft (all perils); and Line 27—Boiler and Machinery; and

(2) Does not include:

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), or any other type of crop or livestock insurance that is privately issued or reinsured (including crop insurance reported under either Line 2.1—Allied Lines or Line 2.2—Multiple Peril (Crop) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ii) Private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1998) (12 U.S.C. 4901) or title insurance;

(iii) Financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) Insurance for medical malpractice;

(v) Health or life insurance, including group life insurance;

(vi) Flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*) or earthquake insurance reported under Line 12 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(vii) Reinsurance or retrocessional reinsurance;

(viii) Commercial automobile insurance, including insurance reported under Lines 19.3 (Commercial Auto No-Fault (personal injury protection)), 19.4 (Other Commercial Auto Liability) and 21.2 (Commercial Auto Physical Damage) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ix) Burglary and theft insurance, including insurance reported under Line 26 (Burglary and Theft) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(x) Surety insurance, including insurance reported under Line 24 (Surety) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(xi) Professional liability insurance as defined in paragraph (t) of this section; or

(xii) Farm owners multiple peril insurance, including insurance reported under Line 3 (Farmowners Multiple Peril) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

(x) *Reciprocal insurer* means an insurer organized under relevant state law as a reciprocal or interinsurance exchange.

(y) *Secretary* means the Secretary of the U.S. Department of the Treasury.

(z) *Small insurer* means an insurer (or an affiliated group of insurers in the case of affiliates within the meaning of paragraph (c) of this section) whose policyholder surplus for the immediately preceding year is less than five times the Program Trigger amount for the current year and whose direct earned premium for the preceding year is also less than five times the Program Trigger amount for the current year. An insurer that has not had a full year of operations during the immediately preceding calendar year is a small insurer if its policyholder surplus in the current year is less than five times the Program Trigger amount for the current year. A captive insurer is not a small insurer, regardless of the size of its policyholder surplus or direct earned premium.

(aa) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(bb) *Surcharge* means the Federal terrorism policy surcharge as defined in paragraph (l) of this section.

(cc) *Surcharge effective date* means the date established by Treasury that begins the assessment period.

(dd) *Treasury* means the U.S. Department of the Treasury.

(ee) *Uncompensated insured losses* means the aggregate amount of insured losses of all insurers in a calendar year, once there has been a Program Trigger Event, that is not compensated by the Federal Government because such losses:

(1) Are within the insurer deductibles of insurers, or

(2) Are within the portions of losses in excess of insurer deductibles that are not compensated through payments made as a result of claims for the Federal share of compensation.

(ff) *United States* means the several states, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280 and 2281).

§ 50.5 Rule of construction for dates.

Unless otherwise expressly provided in the regulation, any date in these regulations is intended to be applied so that the day begins at 12:01 a.m. and ends at midnight on that date.

§ 50.6 Special rules for Interim Guidance safe harbors.

(a) An insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.

(b) For purposes of this section, Interim Guidance means the following documents, which are also available from Treasury at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx:*

(1) Interim Guidance I issued by Treasury on December 3, 2002, and published at 67 FR 76206 (December 11, 2002);

(2) Interim Guidance II issued by Treasury on December 18, 2002, and published at 67 FR 78864 (December 26, 2002);

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003);

(4) Interim Guidance IV issued by Treasury on December 29, 2005, and published at 71 FR 648 (January 5, 2006);

(5) Interim Guidance V issued by Treasury on December 31, 2007, and published at 73 FR 5264 (Jan. 29, 2008).

(6) Interim Guidance VI issued by Treasury on February 4, 2015, and published at 80 FR 6656 (February 6, 2015).

§ 50.7 Procedure for requesting determinations of controlling influence.

(a) An insurer or insurers not having control over another insurer under § 50.4(c)(2)(i) or (ii) may make a written submission to Treasury to rebut a presumption of controlling influence under § 50.4(c)(4)(i) through (iv) or otherwise to request a determination of controlling influence. Such submissions shall be made to the Terrorism Risk Insurance Program Office, Department of the Treasury, Room 1410, 1500 Pennsylvania Ave. NW., Washington, DC 20220. The submission should be entitled, "Controlling Influence Submission," and should provide the full name and address of the submitting insurer(s) and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(b) Treasury will review submissions and determine whether Treasury needs additional written or orally presented information. In its discretion, Treasury may schedule a date, time, and place for an oral presentation by the insurer(s).

(c) An insurer or insurers must provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers and the control factors in § 50.4(c)(4)(i) through (iv); and must explain in detail any basis for why the insurer believes that no controlling influence exists (if a presumption is being rebutted) in light of the particular facts and circumstances, as well as the Act's language, structure and purpose. Any confidential business or trade secret information submitted to Treasury should be clearly marked. Treasury will handle any subsequent request for information designated by an insurer as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 CFR part 1.

(d) Treasury will review and consider the insurer submission and other relevant facts and circumstances. Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any additional information requested by Treasury, and including any oral presentation, Treasury will issue a final determination of whether one insurer has a controlling influence over another insurer for purposes of the Program. The determination shall set forth Treasury's basis for its determination.

(Approved by the Office of Management & Budget under control number 1505–0190.)

§ 50.8 Procedure for requesting general interpretations of statute.

Persons actually or potentially affected by the Act or regulations in this Part may request an interpretation of the Act or regulations by writing to the Terrorism Risk Insurance Program Office, Room 1410, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, giving a detailed explanation of the facts and circumstances and the reason why an interpretation is needed. A requester should segregate and mark any confidential business or trade secret information clearly. Treasury in its discretion will provide written responses to requests for interpretation. Treasury reserves the right to decline to provide a response in any case. Except in the case of any confidential business or trade secret information, Treasury will make written requests for interpretations and responses publicly available at the Treasury Department Library, on the Treasury Web site, or through other means as soon as practicable after the response has been provided. Treasury will handle any subsequent request for information that had been designated by a requester as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 CFR part 1.

Subpart B—Disclosures as Conditions for Federal Payment

§ 50.10 General disclosure requirements.

(a) *Content of disclosure.* As a condition for Federal payments under section 103(b) of the Act, the Act requires that an insurer provide clear and conspicuous disclosure to the policyholder of:

(1) The premium charged for insured losses covered by the Program; and

(2) The Federal share of compensation for insured losses under the Program.

(b) *Form and timing of disclosure.* The disclosure required by the Act must be made on a separate line item in the policy, at the time of offer and of renewal of the policy.

§ 50.11 Definition.

For purposes of this Subpart, unless the context indicates otherwise, the term "disclosure" or "disclosures" refers to the disclosure described in section 103(b)(2) of the Act and § 50.10. The term "cap disclosure" refers to the disclosure required by section 103(b)(3) of the Act and § 50.15.

§ 50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See § 50.16 for model forms.

(b) *Description of premium.* An insurer may describe the premium charged for insured losses covered by the Program as a portion or percentage of an annual premium, if consistent with standard business practice and provided that the amount of annual premium or the method of determining the annual premium is also stated. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a "surcharge."

(c) *Method of disclosure.* Subject to § 50.10(b), an insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of producer.* If an insurer normally communicates with a policyholder through an insurance producer or other intermediary, an insurer may provide disclosures through such producer or other intermediary. If an insurer elects to make the disclosures through an insurance producer or other intermediary, the insurer remains responsible for ensuring that the disclosures are provided by the insurance producer or other intermediary to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(f) *Certification of compliance.* An insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for any claim that is submitted by an insurer for Federal payment under the Program.

§ 50.13 Offer and renewal.

An insurer is deemed to be in compliance with the requirement of providing disclosure "at the time of offer and of renewal of the policy" under § 50.10(b) if the insurer makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder.

§ 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a "separate line item in the policy" under § 50.10(b) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement, or other document that is made a part of the policy.

§ 50.15 Cap disclosure.

(a) *General.* Under section 103(e)(2) of the Act, if the aggregate insured losses exceed $100,000,000,000 during any calendar year, the Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000, and no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000.

(b) *Other requirements.* As a condition for Federal payments under section 103(b) of the Act, an insurer must provide clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under section 103(e)(2). The cap disclosure must be made at the time of offer, purchase, and renewal of the policy.

(c) *Offer, purchase, and renewal.* An insurer is deemed to be in compliance with the requirement of providing disclosure "at the time of offer, purchase, and renewal of the policy" under § 50.15(b) if the insurer:

(1) Makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder; and

(2) If terrorism risk coverage is purchased, the insurer makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, at the time the transaction is completed.

(d) *Other applicable rules.* The cap disclosure is covered by the rules in § 50.12(a), (c), (d), (e), and (f) (relating to clear and conspicuous disclosure).

§ 50.16 Use of model forms.

(a) *General.* An insurer that is required to make the disclosure under § 50.10(b) or § 50.15(b) is deemed to be in compliance with the disclosure requirements if the insurer uses NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, as appropriate.

(b) *Not exclusive means of compliance.* An insurer is not required to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 to satisfy the disclosure requirements. An insurer may use other means to comply with the disclosure requirements, as long as the disclosures comport with the requirements of the Act.

(c) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as revised in January 2015, or as subsequently modified by the NAIC, provided Treasury has stated that usage by insurers of the subsequently modified forms is deemed to satisfy the disclosure requirements of the Act and the insurer uses the most current forms, so approved by Treasury, that are available at the time of disclosure. These forms may be found on the Treasury Web site at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx.*

§ 50.17 General disclosure requirements for State residual market insurance entities and State workers' compensation funds.

(a) *Residual market mechanism disclosure.* A state residual market insurance entity or state workers' compensation fund may provide the disclosures required by this subpart B to policyholders using normal business practices, including forms and methods of communication used to communicate similar information to policyholders. The disclosures may be made by the state residual market insurance entity or state workers' compensation fund itself, the individual insurers that participate in the state residual market insurance entity or state workers' compensation fund, or its servicing carriers. The ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer filing a claim under the Program.

(b) *Other requirements.* Except as provided in this section, all other disclosure requirements set out in this subpart B apply to state residual insurance market entities and state workers' compensation funds.

Subpart C—Mandatory Availability

§ 50.20 General mandatory availability requirements.

(a) *General requirements.* Under section 103(c) of the Act, an insurer must:

(1) Make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) Make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(b) *Compliance through 2020.* Under section 108(a) of the Act, an insurer must comply with paragraphs (a)(1) and (2) of this section through calendar year 2020.

(c) *Beyond 2020.* Notwithstanding paragraph (a)(2) of this section and § 50.22(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2020, even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

(b) *Offer consistent with definition of act of terrorism.* An insurer must make available coverage for insured losses in a policy of property and casualty insurance consistent with the definition of an act of terrorism as defined in § 50.4(b).

(c) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to make available coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder or prospective policyholder declines, the insurer may negotiate with the policyholder or prospective policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable state law. An insurer is not required by the Act to offer partial coverage if the policyholder or prospective policyholder declines full coverage. See § 50.23.

(d) *Demonstrations of compliance.* If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

§ 50.22 No Material difference from other coverage.

(a) *Terms, amounts, and other coverage limitations.* As provided in § 50.20(a)(2), an insurer must offer coverage for insured losses arising from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses arising from events other than acts of terrorism. For purposes of this requirement, "terms" excludes price.

(b) *Limitations on types of risk.* An insurer is not required to cover risks that it typically excludes or does not write to satisfy the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct state regulatory oversight, or because a state permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

§ 50.23 Applicability of State law requirements.

(a) *General.* After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected an insurer may then offer coverage that is on different terms, amounts, or coverage limitations, as long as such an offer does not violate any applicable state law requirements.

(b) *Examples.* (1) If an insurer subject to state regulation first makes available coverage in accordance with § 50.20 and the state has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions.

(2) If an insurer subject to state regulation first makes available coverage in accordance with § 50.20 and the state permits certain exclusions or allows for other limitations, or an insurance policy is not governed by state law requirements, then the insurer may subsequently offer limited coverage or coverage with exclusions.

Subpart D—State Residual Market Insurance Entities; State Workers' Compensation Funds

§ 50.30 General participation requirements.

(a) *Insurers.* As defined in § 50.4(o), all state residual market insurance entities and state workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory participation.* State residual market insurance entities and State workers' compensation funds are mandatory participants in the Program subject to the rules issued in this Subpart.

(c) *Identification.* Treasury maintains a list of state residual market insurance entities and state workers' compensation funds at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx*. Procedures for providing comments and updates to that list are posted with the list.

§ 50.31 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A state residual market insurance entity or a state workers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A state residual market insurance entity or a state workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in § 50.4(h)(1) or (2) for the purposes of calculating the appropriate measure of direct earned premium.

§ 50.32 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares profits and losses with a private sector insurer is deemed not to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A state residual market insurance entity or a State workers' compensation fund that is deemed not to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

§ 50.33 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing carriers.* For purposes of this subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a state residual market insurance entity or a state workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a state residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.4(h)(1) or (2)) of the servicing carrier.

(b) *Participant insurers.* For purposes of this Subpart, a participant insurer is an insurer that shares in the profits and losses of a state residual market insurance entity or a state workers' compensation fund. Premium income that is distributed to or assumed by participant insurers in a state residual market insurance entity or state workers' compensation fund (whether directly or as quota share insurers of risks written by servicing carriers), shall be included in direct earned premium (as described in § 50.4(h)(1) or (2)) of the participant insurer.

Subpart E—Self-Insurance Arrangements; Captives [Reserved].

Subpart F—Data Collection

§ 50.50 General.

Treasury may request from insurers such data and information as may be reasonably required in support of Treasury's administration of the Program.

§ 50.51 Annual data reporting.

(a) *General.* No later than March 1 of each calendar year, all insurers shall provide specified data and information respecting their Program participation.

(b) *Scope.* The information to be provided shall address: The lines of property and casualty insurance subject to the Program, the premiums earned for terrorism risk insurance within those lines and for those lines generally, the geographical location of exposures covered under terrorism risk insurance, the pricing of terrorism risk insurance, the take-up rate for terrorism risk insurance, the amount of private reinsurance obtained by participating insurers in connection with such policies, and other matters concerning the Program as may be identified by Treasury.

(c) *Method of reporting.* (1) Treasury will promulgate forms defining the specific data and information that each insurer must submit and make these forms available on its Web site. Each insurer shall submit the required data and information by electronic submission through the forms and data portal(s) identified on Treasury's Web site. All data and information provided as part of such electronic submission shall be certified by the insurer as a full and true statement of the information provided to the best of its knowledge, information and belief.

(2) The data and information required to be provided under this subsection may be modified annually by Treasury. Any modification shall be made during the prior calendar year, and Treasury shall provide insurers at least 90 days before requiring collection of any newly specified data or information.

(d) *Supplemental requests.* Treasury may issue supplemental requests, to some or all participating insurers, in connection with the annual data request provided for under this section, to the extent Treasury determines that it requires additional or clarifying information in order to analyze the effectiveness of the Program. Insurers shall respond to any such supplemental requests as may be made within the timeframe and in the manner specified by Treasury.

(e) *Small insurer exception.* The Secretary may exempt a small insurer that meets the definition in § 50.4(z) from any or all data calls under this section, or may modify the requests as applicable to such small insurer.

§ 50.52 Small insurer data.

(a) *General.* The Secretary may collect information relating to small insurers, as defined in § 50.4(z), in order to conduct a study of small insurers participating in the Program, and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace.

(b) *Scope.* Information collected concerning small insurers may include information necessary for Treasury to identify:

(1) Changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;

(2) How the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;

(3) The impact on small insurers of the Program's mandatory availability requirement under section 103(c) of the Act;

(4) The effect on small insurers of increasing the trigger amount for the Program under section 103(e)(1)(B) of the Act;

(5) The availability and cost of private reinsurance for small insurers; and

(6) The impact that state workers compensation laws have on small insurers and workers compensation carriers in the terrorism risk insurance marketplace.

§ 50.53 Collection of claims data.

(a) *General.* Subsequent to any certification by the Secretary of an act of terrorism, insurers shall report to Treasury information respecting insured losses arising from the act of terrorism.

(b) *Contents of periodic reporting.* Reporting under this subsection shall be by a form prescribed by Treasury and made available on the Treasury Web site, which provides basic information about each claim established by an insurer that involves or potentially involves an insured loss. Information to be reported for any claims by or against a policyholder shall identify paid and reserved amounts associated with the claim. In the case of an affiliated group of insurers, the form required by this subsection shall be submitted by a single insurer designated within the affiliated group, which shall report on a consolidated basis. Data and information reported under this subsection will include:

(1) A listing of each claim by name of insured, catastrophe code, line of business, and in the case of an affiliated group of insurers, the particular insurer or insurers within the group associated with each claim;

(2) Amounts paid, both loss and loss adjustment expenses, in connection with the claim as of the effective date of the report; and

(3) Amounts reserved, both loss and loss adjustment expenses, in connection with the claim as of the effective date of the report.

(c) *Timing of reporting.* To the extent that an insurer has established one or more claims that it believes involve insured losses arising from an act of terrorism, the insurer shall submit its first report within 60 days of establishing the first of such claims. An updated report shall be submitted each month thereafter, reporting data as of the prior month, until all claims arising from the act of terrorism have been resolved.

(d) *Interrelationship with other reporting requirements.* The reporting requirements under this subsection are independent of the Initial Notice of Deductible Erosion, Initial Certification of Loss, and Supplementary Certifications of Loss requirements in subpart H.

(e) *Other sources of information.* Subsequent to any certification of an act of terrorism, Treasury may also seek information respecting loss estimates and projections from one or more organizations that are not participants in the Program, such as state insurance regulators, insurance modeling organizations, rating agencies, insurance brokers and producers, and insurance data aggregators. A data request may also be directed to insurers identified in connection with such inquiries. An insurer subject to such a data call shall respond to this request within the time frame specified in the request.

§ 50.54 Handling of data.

(a) *General.* All nonpublic information submitted to the Secretary under subparts F and G of this part shall be considered proprietary information and shall:

(1) Be handled and stored by Treasury in an appropriately secure manner;

(2) Be considered, where appropriate, to be trade secrets or commercial or financial information obtained from a person and privileged or confidential; and

(3) Not be publicly released in any unaggregated form in which a consumer, policyholder, or insurer is identifiable.

(b) *Confidentiality.* (1) The submission of any non-publicly available data and information to the Secretary under subparts F and G of this part, and the sharing of any non-publicly available data with or by the Secretary among other Federal agencies, the state insurance regulatory authorities, or any other entities shall not constitute a waiver of, or otherwise affect, any privilege or immunity arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject.

(2) Any requirement under Federal or state law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the

Secretary, regarding privacy or confidentiality of any data or information in the possession of the source to the Secretary, shall continue to apply to such data or information after the data or information has been provided pursuant to this Subpart.

(3) Any data or information obtained by the Secretary under subparts F or G of this part may be made available to state insurance regulatory authorities, individually or collectively through an information-sharing agreement that:

(i) Shall comply with applicable Federal law; and

(ii) Shall not constitute a waiver of, or otherwise affect, any privilege or immunity under Federal or state law (including any privilege referred to in paragraph (b)(1) of this section and the rules of any Federal or State court) to which the data or information is otherwise subject.

(4) Section 552 of title 5, United States Code, including any exceptions thereunder, shall apply to any data or information submitted under this Subpart by an insurer or affiliate of an insurer.

Subpart G—Certification

§ 50.60 Certification.

(a) *Certification decision.* The Secretary, in consultation with the United States Attorney General and the Secretary of Homeland Security, is responsible for determining whether to certify an act as an act of terrorism.

(b) *Eligibility; timing.* An act which satisfies the definition in § 50.4(b) is eligible for certification by the Secretary as an act of terrorism after consultation by the Secretary with the United States Attorney General and the Secretary of Homeland Security.

(c) *Finality.* Any decision by the Secretary to certify, or determination not to certify, an act as an act of terrorism shall be final, and shall not be subject to judicial review.

(d) *Nondelegation.* The Secretary may not delegate or designate to any other officer, employee, or person, the determination of whether to certify an act as an act of terrorism.

§ 50.61 Public communication.

(a) *Initial notification.* After the Secretary commences consideration of whether an act may satisfy the definition in § 50.4(b), and if circumstances allow, Treasury shall publish a document in the **Federal Register** notifying the public that the act is under review for certification as an act of terrorism. Treasury may also announce that an act is not under consideration for certification.

(b) *Update notification.* Not later than 30 days following the publication of a notice under paragraph (a) of this section that an act is under consideration for certification, and not later than every 60 days thereafter, Treasury shall publish a document in the **Federal Register** notifying the public whether the act is still under review for certification as an act of terrorism.

(c) *Contents of notification.* Nothing in this section shall require Treasury to provide any information other than whether the act is under review for certification as an act of terrorism (or is no longer under such review) or shall limit Treasury from providing further information of relevance.

(d) *Rules of construction.* Nothing in this section precludes the Secretary from certifying or determining not to certify an act as an act of terrorism before notifying the public that the act is under review for certification. If, in the discretion of the Secretary, circumstances relating to an act render timely notification under this section by Treasury impracticable, Treasury shall provide the notification as soon as practicable, in a manner the Secretary determines is appropriate.

(e) *Nonbinding decision.* A notification made under this section shall not be construed to be a final determination by the Secretary of whether to certify an act as an act of terrorism.

§ 50.62 Certification data collection.

(a) *General.* (1) The Secretary, when evaluating an act for certification as an act of terrorism, may at any time direct one or more insurers to submit information regarding projected and actual losses in connection with an act and any other information the Secretary determines appropriate. The information sought by the Secretary shall be specified in the data request, and any insurer subject to the data request shall respond to the request within the time frame specified by the Secretary at the time of the request. The data requested may include actual loss reserves established by insurers in connection with the act under consideration, loss estimates generated by insurers in connection with the act under consideration which have not yet been established as actual loss reserves, and information respecting an insurer's property and casualty exposures in a particular geographic area associated with the act under consideration.

(2) An insurer not required by Treasury to submit information under paragraph (a)(1) of this section may voluntarily submit information to the Secretary as specified in public notifications issued by Treasury.

(b) *Other sources of information.* The Secretary may request information with respect to loss estimates and likely affected insurers from organizations, including state insurance regulators, insurance modeling organizations, rating agencies, insurance brokers and producers, and insurance data aggregators.

§ 50.63 Notification of certification determination.

(a) *Public notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall publish a statement and submit a document to the **Federal Register** notifying the public of the Secretary's decision.

(b) *Insurance supervisor notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall notify in writing any relevant supervisory officials of the Secretary's decision.

(c) *Congressional notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall notify in writing the President of the U.S. Senate and the Speaker of the U.S. House of Representatives of the Secretary's decision.

(d) *Rule of construction.* If, in the discretion of the Secretary, circumstances relating to an act render timely notification by Treasury under this section impracticable, Treasury shall provide the notification as soon as practicable, in a manner the Secretary determines is appropriate.

Subpart H—Claims Procedures

§ 50.70 Federal share of compensation.

(a) *General.* (1) Treasury will pay the Federal share of compensation for insured losses as provided in section 103 of the Act once a Certification of Loss required by § 50.73 is deemed sufficient. The Federal share of compensation under the Program shall be:

(i) 85 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2015;

(ii) 84 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2016;

(iii) 83 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2017;

(iv) 82 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2018;

(v) 81 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2019; and

(vi) 80 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2020 and any calendar year thereafter.

(2) The percentages in paragraph (a)(1) of this section are subject to any adjustments described in § 50.71 and to the cap of $100 billion as provided in section 103(e)(2) of the Act.

(b) *Program Trigger amounts.* Notwithstanding paragraph (a) of this section or anything in this subpart to the contrary, Federal compensation will not be paid by Treasury unless the aggregate industry insured losses resulting from one or more certified acts of terrorism exceed the following amounts:

(1) For insured losses resulting from acts of terrorism taking place in calendar year 2015: $100 million;

(2) For insured losses resulting from acts of terrorism taking place in calendar year 2016: $120 million;

(3) For insured losses resulting from acts of terrorism taking place in calendar year 2017: $140 million;

(4) For insured losses resulting from acts of terrorism taking place in calendar year 2018: $160 million;

(5) For insured losses resulting from acts of terrorism taking place in calendar year 2019: $180 million;

(6) For insured losses resulting from acts of terrorism taking place in calendar year 2020 and any calendar year thereafter: $200 million.

(c) *Conditions for payment of Federal share.* Subject to paragraph (d) of this section, Treasury shall pay the appropriate amount of the Federal share of compensation for an insured loss to an insurer upon a determination that:

(1) The insurer is an entity, including an affiliate thereof, that meets the requirements of § 50.4(o);

(2) The insurer's insured losses, as defined in § 50.4(n) and limited by paragraph (d) of this section (including the allocated dollar value of the insurer's proportionate share of insured losses from a state residual market insurance entity or a state workers' compensation fund as described in § 50.33), have exceeded its insurer deductible as defined in § 50.4(p);

(3) The insurer has paid or is prepared to pay an insured loss, based on a filed claim for the insured loss;

(4) Neither the insurer's claim for Federal payment nor any underlying claim for an insured loss is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(5) The insurer has provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.14 and a cap disclosure as required by § 50.15;

(6) The insurer offered coverage for insured losses and the offer was accepted by the insured prior to the act which results in the insured loss;

(7) The insurer took all steps reasonably necessary to properly and carefully investigate the insured loss and otherwise processed the insured loss using practices appropriate for the business of insurance;

(8) The insured loss is within the scope of coverage issued by the insurer under the terms and conditions of one or more policies for commercial property and casualty insurance as defined in § 50.4(w); and

(9) The procedures specified in this Subpart have been followed and all conditions for payment have been met.

(d) *Adjustments.* Treasury may subsequently adjust, including requiring repayment of, any payment made under paragraph (c) of this section in accordance with its authority under the Act.

(e) *Suspension of payment for other insured losses.* Upon a determination by Treasury that an insurer has failed to meet any of the requirements for payment specified in paragraph (c) of this section for a particular insured loss, Treasury may suspend payment of the Federal share of compensation for all other insured losses of the insurer pending investigation and audit of the insurer's insured losses.

(f) *Aggregate industry losses.* Treasury will determine the amount of aggregate industry insured losses resulting from a certified act of terrorism. If aggregate industry insured losses in a calendar year resulting from one or more certified acts of terrorism exceed the applicable Program Trigger amounts specified in paragraph (b) of this section, Treasury will publish a document in the **Federal Register** of a Program Trigger Event.

§ 50.71 Adjustments to the Federal share of compensation.

(a) *Aggregate amount of insured losses.* The aggregate amount of insured losses of an insurer in a calendar year used to calculate the Federal share of compensation shall be reduced by any amounts recovered by the insurer as salvage or subrogation for its insured losses in the calendar year.

(b) *Amount of Federal share of compensation.* The Federal share of compensation shall be adjusted as follows:

(1) *No excess recoveries.* For any calendar year, the sum of the Federal share of compensation paid by Treasury to an insurer and the insurer's recoveries for insured losses from other sources shall not be greater than the insurer's aggregate amount of insured losses for acts of terrorism in that calendar year. Amounts recovered for insured losses in excess of an insurer's aggregate amount of insured losses for acts of terrorism in a calendar year shall be repaid to Treasury within 45 days after the end of the month in which total recoveries of the insurer, from all sources, become excess. For purposes of this paragraph, amounts recovered from a reinsurer pursuant to an agreement whereby the reinsurer's right to any excess recovery has priority over the rights of Treasury shall not be considered a recovery subject to repayment to Treasury.

(2) *Reduction of amount payable.* The Federal share of compensation for insured losses under the Program shall be reduced by the amount of other compensation provided by other Federal programs to an insured or a third party to the extent such other compensation duplicates the insurance indemnification for those insured losses.

(i) *Other Federal program compensation.* For purposes of this section, compensation provided by other Federal programs for insured losses means compensation that is provided by Federal programs established for the purpose of compensating persons for losses in the event of emergencies, disasters, acts of terrorism, or similar events. Compensation provided by Federal programs for insured losses excludes benefit or entitlement payments, such as those made under the Social Security Act, under laws administered by the Secretary of Veteran Affairs, railroad retirement benefit payments, and other similar types of benefit payments.

(ii) *Insurer due diligence.* With respect to any underlying claim for insured losses, each insurer shall inquire of all involved policyholders, insureds, and claimants whether the person receiving insurance proceeds for an insured loss has received, expects to receive, or is entitled to receive compensation from another Federal program for the insured loss, and if so, the source and the amount of the compensation received or expected. The response, source, and such amounts shall be reported with each underlying claim on the form specified in § 50.73(b)(1).

§ 50.72 Notice of deductible erosion.

Each insurer shall submit to Treasury a Notice on a form prescribed by Treasury whenever the insurer's aggregate insured losses (including reserves for "incurred but not reported" losses) within a calendar year exceed an amount equal to 50 percent of the insurer's deductible as specified in § 50.4(p). Insurers are advised that the form for the Notice of Deductible Erosion will include an initial estimate of aggregate insured losses for the calendar year, the amount of the insurer deductible, and an estimate of the Federal share of compensation for the insurer's aggregate insured losses. In the case of an affiliated group of insurers, the Notice will include the name and address of a single designated insurer within the affiliated group that will serve as the single point of contact for the purpose of providing loss and compliance certifications as required in § 50.73 and for receiving, disbursing, and distributing payments of the Federal share of compensation in accordance with § 50.74. An insurer, at its option, may elect to include with its Notice of Deductible Erosion the certification of direct earned premium required by § 50.73(b)(3).

§ 50.73 Loss certifications.

(a) *General.* When an insurer has paid aggregate insured losses that exceed its insurer deductible for a calendar year, the insurer may make claim upon Treasury for the payment of the Federal share of compensation for its insured losses. The insurer shall file an Initial Certification of Loss, on a form prescribed by Treasury, and thereafter such Supplementary Certifications of Loss, on a form prescribed by Treasury, as may be necessary to receive payment for the Federal share of compensation for its insured losses.

(b) *Initial certification of loss.* An insurer shall use its best efforts to file with the Program the Initial Certification of Loss within 45 days following the last calendar day of the month when an insurer has paid aggregate insured losses that exceed its insurer deductible. The Initial Certification of Loss will include the following:

(1) Basic information, on a form prescribed by Treasury, about each insured loss paid (or to be paid pursuant to § 50.73(b)(2)(i)) by the insurer. The form will include:

(i) A listing of each insured loss paid (or to be paid pursuant to § 50.73(b)(2)(i)) by the insurer by catastrophe code and line of business;

(ii) The total amount of reinsurance recovered from other sources;

(iii) A calculation of the aggregate insured losses sustained by the insurer above its insurer deductible for the calendar year; and

(iv) The amount the insurer claims as the Federal share of compensation for its aggregate insured losses.

(2) A certification that the insurer is in compliance with the provisions of section 103(b) of the Act and this part, including certifications that:

(i) The underlying insured losses reported pursuant to § 50.73(b)(1) either: Have been paid by the insurer; or will be paid by the insurer upon receipt of an advance payment of the Federal share of compensation as soon as possible, consistent with the insurer's normal business practices, but not longer than five business days after receipt of the Federal share of compensation;

(ii) The underlying claims for insured losses were filed by persons who suffered an insured loss, or by persons acting on behalf of such persons;

(iii) The underlying claims for insured losses were processed in accordance with appropriate business practices and the procedures specified in this subpart;

(iv) The insurer has complied with the disclosure requirements of §§ 50.10 through 50.14, and the cap disclosure requirement of § 50.15, for each underlying insured loss that is included in the amount of the insurer's aggregate insured losses; and

(v) The insurer has complied with the mandatory availability requirements of subpart C of this part.

(3) A certification of the amount of the insurer's direct earned premium, together with the calculation of its insurer deductible (provided this certification was not submitted previously with the Notice of Deductible Erosion).

(4) A certification that the insurer will disburse payment of the Federal share of compensation in accordance with this Subpart.

(5) A certification that if Treasury has determined a *Pro Rata* Loss Percentage (PRLP) (see § 50.112), the insurer has complied with applying the PRLP to insured loss payments, where required.

(c) *Supplementary certifications of loss.* If the total amount of the Federal share of compensation due an insurer for insured losses under the Act has not been determined at the time an Initial Certification of Loss has been filed, the insurer shall file monthly, or on a schedule otherwise determined by Treasury, Supplementary Certifications of Loss updating the amount of the Federal share of compensation due for the insurer's insured losses. Supplementary Certifications of Loss will include the following:

(1) A form as described in § 50.73(b)(1); and

(2) A certification as described in § 50.73(b)(2).

(d) *Supplementary information.* In addition to the information required in paragraphs (b) and (c) of this section, Treasury may require such additional supporting documentation as required to ascertain the Federal share of compensation for the insured losses of any insurer.

(e) *State Residual Market Insurance Entities and State Workers' Compensation Funds.* A state residual market insurance entity or a state workers' compensation fund described in § 50.32 shall provide the Certifications of Loss described in § 50.73(b) and (c) for all of its insured losses to each participating insurer at the time it provides the allocated dollar value of the participating insurer's proportionate share of insured losses. In addition, at such time the state residual market insurance entity or state workers' compensation fund shall provide the certification described in § 50.73(b)(2) to Treasury. Participating insurers shall treat the allocated dollar value of their proportionate share of insured losses from a state residual market insurance entity or state workers' compensation fund as an insured loss for the purpose of their own reporting to Treasury in seeking the Federal share of compensation.

§ 50.74 Payment of Federal share of compensation.

(a) *Timing.* Treasury will promptly pay to an insurer the Federal share of compensation due the insurer for its insured losses. Payment shall be made in such installments and on such conditions as determined by the Treasury to be appropriate. Any overpayments by Treasury of the Federal share of compensation will be offset from future payments to the insurer or returned to Treasury within 45 days.

(b) *Payment process.* Payment of the Federal share of compensation for insured losses will be made to the insurer designated on the Notice of Deductible Erosion required by § 50.72. An insurer that requests payment of the Federal share of compensation for insured losses must receive payment through electronic funds transfer. The insurer must establish either an account for reimbursement as described in paragraph (c) of this section (if the insurer only seeks reimbursement) or a segregated account as described in paragraph (d) of this section (if the insurer seeks advance payments or a combination of advance payments and reimbursement). Applicable procedures will be posted at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx* or otherwise will be made publicly available.

(c) *Account for reimbursement.* An insurer shall designate an account for the receipt of reimbursement of the Federal share of compensation at an institution eligible to receive payments through the Automated Clearing House (ACH) network.

(d) *Segregated account for advance payments.* An insurer that seeks advance payments of the Federal share of compensation as certified according to § 50.73(b)(2)(i) shall establish a segregated account into which Treasury will make advance payments as well as reimbursements to the insurer.

(1) *Definition of segregated account.* For purposes of this section, a segregated account is an interest-bearing separate account established by an insurer at a financial institution eligible to receive payments through the ACH network. Such an account is limited to the purposes of:

(i) Receiving payments of the Federal share of compensation;

(ii) Disbursing payments to insureds and claimants; and

(iii) Transferring payments to the insurer or affiliated insurers for insured losses reported as already paid.

(2) *Remittance of interest.* All interest earned on advance payments in the segregated account must be remitted at least quarterly to Treasury's Bureau of the Fiscal Service or as otherwise prescribed in applicable procedures.

(e) *Denial or withholding of advance payment.* Treasury may deny or withhold advance payments of the Federal share of compensation to an insurer if Treasury determines that the insurer has not properly disbursed previous advances of the Federal share of compensation or otherwise has not complied with the requirements for advance payment as provided in this Subpart.

(f) *Affiliated group.* In the case of an affiliated group of insurers, Treasury will make payment of the Federal share of compensation for the insured losses of the affiliated group to the insurer designated in the Notice of Deductible Erosion to receive payment on behalf of the affiliated group. The designated insurer receiving payment from Treasury must distribute payment to affiliated insurers in a manner that ensures that each insurer in the affiliated group is compensated for its share of insured losses, taking into account a reasonable and fair allocation of the group deductible among affiliated insurers. Upon payment of the Federal share of compensation to the designated insurer, Treasury's payment obligation to the insurers in the affiliated group with respect to any insured losses covered is discharged to the extent of the payment.

§ 50.75 Determination of affiliations.

For the purposes of this subpart, an insurer's affiliates for any calendar year shall be determined by the circumstances existing on the date of the act which is the Program Trigger Event for that calendar year.

§ 50.76 Final netting.

(a) *General.* Pursuant to section 103(e)(4) of the Act, the Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(b) *Final Netting Date.* The Secretary may determine a Final Netting Date for a calendar year, which for purposes of this Part is the date on or before which an insurer must report to Treasury on the insurer's Certifications of Loss (both Initial Certification of Loss and any Supplemental Certifications of Loss) all insured losses that have been reported by its policyholders for the calendar year.

(1) *Criteria for Final Netting Date.* The establishment of a Final Netting Date will be based on factors and considerations including:

(i) Amounts of case reserves reported by insurers to Treasury for open underlying insured losses;

(ii) The rate at which claims for the Federal share of compensation for insured losses are being made by insurers to Treasury;

(iii) The rate at which new underlying insured losses are being added by insurers to their Supplementary Certifications of Loss and reported;

(iv) The predominant lines of business for which underlying insured losses are being reported;

(v) Tort and contract statutes of limitations relevant to insured losses and the manner in which they are being applied by the Federal courts;

(vi) Common business practices;

(vii) Issues that are delaying final resolution of insured losses;

(viii) The application of the liability limitations and procedures under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (6 U.S.C. 441 *et seq.*) that may affect final resolution of insured losses;

(ix) Issues related to the cap on annual liability for insurer losses, including whether a projection that the cap on annual liability will be reached in connection with any calendar year indicates that no Final Netting Date should be set for that calendar year;

(x) Treasury's claims administration costs; and

(xii) Such other factors as the Secretary considers appropriate to take into account.

(2) *Notice of Final Netting Date.* Treasury shall announce and publish in the **Federal Register** notice of a proposed Final Netting Date and its application to a specific calendar year, and will solicit comments from the public regarding the appropriateness of the proposed Final Netting Date. After receipt and evaluation of comments respecting its proposed Final Netting Date, Treasury will publish in the **Federal Register** a Final Netting Date, which is at least 180 days after the date of publication. The Secretary's determination of a Final Netting Date is final and not subject to judicial review.

(c) *Post-Final Netting Date claims.* After the Final Netting Date, insurers may only make further claims for the Federal share of compensation for insured losses by submission of Supplemental Certifications of Loss with updated information on underlying insured losses previously reported to Treasury. Such updated information may reflect a decision by a court of competent jurisdiction concerning a limitation of liability under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002. In the case of workers' compensation losses, the insurer may provide updated information based on the number of workers' compensation claimants previously reported. An insurer may not report any new underlying insured losses, or increased workers' compensation loss amounts based on an increase in the number of workers' compensation claimants, to Treasury after a Final Netting Date, except as provided in this section.

(d) *Commutation.* A commutation is the payment by Treasury of a lump sum present value of future payments to an insurer in lieu of making payments in the future, as provided in this section.

(1) In lieu of continued submission of Supplemental Certifications of Loss after the Final Netting Date as provided in paragraph (c) of this section, Treasury may require, or consider an insurer's request for, a commutation of an insurer's future claims for the Federal share of compensation based on estimates for the underlying insured losses reported to Treasury on or before the Final Netting Date. The payment by Treasury of a final commuted amount to an insurer will discharge Treasury from

all future liabilities to the insurer for the Federal share of compensation for insured losses for the applicable calendar year. In the case of an affiliated group of insurers, the requirements of § 50.74(f) apply, and payment of the final commuted amount to the designated insurer of the affiliated group discharges Treasury's payment obligation to the insurers in the affiliated group for insured losses for the applicable calendar year.

(2) If future claims are to be commuted, Treasury may require additional information from the insurer, including an insurer's justification for a final payment amount with necessary actuarial factors and methodology, and pertinent information regarding the insurer's business relationships and other reinsurance recoverables. Insurers will be required to justify discount and other factors from which final payment amounts are derived. If Treasury notifies an insurer of a requirement to submit additional information to inform its commutation decision, the insurer will be provided (depending upon the complexity of the material sought) no less than 90 days from the date of notification to submit material required in the notice. If the insurer fails to provide the requested information, it will forfeit the right to future payments from Treasury. Treasury will evaluate such information in order to determine a final payment amount or (if applicable) an amount to be repaid to Treasury. Treasury may determine that it will not consider commutation until it has completed an audit of an insurer's insured losses pursuant to the authority set forth in Subpart I of these regulations.

(3) Payments of commuted amounts are not considered to be advance payments requiring a segregated account as described in § 50.74(d).

(4) Notwithstanding § 50.70(d), a payment by Treasury of a final commuted amount to an insurer is final unless:

(i) Treasury is put on notice that an insurer's claim was fraudulent or that other conditions for Federal payment were not met, in which case the insurer will be required to repay amounts that were not due; or

(ii) The exception in paragraph (e) of this section applies, in which case Treasury may make additional payments for insured losses, but only under the conditions described in paragraph (e).

(e) *Exception.* If within one year after the Final Netting Date, and regardless of commutation, an insurer has additional underlying reported insured losses that, in the absence of a Final Netting Date, would result in an increase of the Federal share of compensation to that insurer by 20% of the total amount already paid to that insurer, the insurer may request Treasury to allow those underlying insured losses to be submitted as part of a certification of loss. Under such circumstances and provided that all other conditions for payment have been met, Treasury may reopen or extend the insurer's claim for the Federal share of compensation for insured losses for the pertinent calendar year.

Subpart I—Audit and Investigative Procedures

§ 50.80 Audit authority.

The Secretary of the Treasury, or an authorized representative, shall have, upon reasonable notice, access to all books, documents, papers and records of an insurer that are pertinent to amounts paid to the insurer as the Federal share of compensation for insured losses, or pertinent to any Federal terrorism policy surcharge that is imposed pursuant to subpart J of this part, for the purposes of investigation, confirmation, audit, and examination.

§ 50.81 Recordkeeping.

(a) Each insurer that seeks payment of a Federal share of compensation under subpart H of this part shall retain such records as are necessary to fully disclose all material matters pertinent to insured losses and the Federal share of compensation sought under the Program, including, but not limited to, records regarding premiums and insured losses for all commercial property and casualty insurance issued by the insurer and information relating to any adjustment in the amount of the Federal share of compensation payable. Insurers shall maintain detailed records for not less than five (5) years from the termination dates of all reinsurance agreements involving property and casualty insurance subject to the Act. Records relating to premiums shall be retained and available for review for not less than three (3) years following the conclusion of the policy year. Records relating to underlying claims shall be retained for not less than five (5) years following the final adjustment of the claim.

(b) Each insurer that collects a Federal terrorism policy surcharge as required by Subpart J of this part shall retain records related to such surcharge, including records of the property and casualty insurance premiums subject to the surcharge, the amount of the surcharge imposed on each policy, aggregate Federal terrorism policy surcharges collected, and aggregate Federal terrorism policy surcharges remitted to Treasury during each assessment period. Such records shall be retained and kept available for review for not less than three (3) years following the conclusion of the assessment period or settlement of accounts with Treasury, whichever is later.

§ 50.82 Civil penalties.

(a) *General.* The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (b) of this section against any insurer that the Secretary determines, on the record after opportunity for a hearing:

(1) Has failed to charge, collect, or remit the Federal terrorism policy surcharge under Subpart J;

(2) Has intentionally provided to Treasury erroneous information regarding premium or loss amounts;

(3) Submits to Treasury fraudulent claims under the Program for insured losses;

(4) Has failed to provide any disclosures or other information required by Treasury; or

(5) Has otherwise failed to comply with provisions of the Act or these regulations.

(b) *Amount.* The amount under this section is the greater of $1,325,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with the Act or these regulations, such amount in dispute.

(c) *Recovery of amount in dispute.* A penalty under this section for any failure to pay, charge, collect, or remit amounts in accordance with the Act or under these regulations shall be in addition to any such amounts recovered by Treasury.

(d) *Procedure.* Treasury shall notify in writing any insurer that it believes has committed one or more of the acts identified in paragraph (a) of this section. In that notification, Treasury shall identify the act or acts that it believes has been violated, and its basis for that belief, and shall set a schedule for further proceedings which shall include:

(1) The opportunity for a written submission by the insurer that provides all relevant facts and circumstances concerning the alleged conduct, including any information that the insurer wishes Treasury to consider in connection with the alleged conduct; and

(2) A hearing on the record, unless waived by the insurer, during which Treasury and the insurer may present

further information respecting the conduct in question.

(e) *Other remedies preserved.* Treasury's assessment and collection of a civil monetary penalty under this section shall be in addition and without prejudice to any other civil remedies or criminal penalties that may arise on account of the conduct in question under any other laws or regulations of the United States.

Subpart J—Recoupment and Surcharge Procedures

§ 50.90 Mandatory and discretionary recoupment.

(a) Pursuant to section 103(e) of the Act, the Secretary shall impose, and insurers shall collect, such Federal terrorism policy surcharges as needed to recover 140 percent of the mandatory recoupment amount for any calendar year.

(b) In the Secretary's discretion, the Secretary may recover any portion of the aggregate Federal share of compensation that exceeds the mandatory recoupment amount through a Federal terrorism policy surcharge based on the factors set forth in section 103(e)(7)(D) of the Act.

(c) If the Secretary imposes a Federal terrorism policy surcharge as provided in paragraph (a) of this section, then the required amounts, based on the extent to which payments for the Federal share of compensation have been made by the collection deadlines in section 103(e)(7)(E) of the Act, shall be collected in accordance with such deadlines:

(1) For any act of terrorism that occurs on or before December 31, 2017, the Secretary shall collect all required amounts by September 30, 2019;

(2) For any act of terrorism that occurs between January 1 and December 31, 2018, the Secretary shall collect 35 percent of any required amounts by September 30, 2019, and the remainder by September 30, 2024; and

(3) For any act of terrorism that occurs on or after January 1, 2019, the Secretary shall collect all required amounts by September 30, 2024.

§ 50.91 Determination of recoupment amounts.

(a) If payments for the Federal share of compensation have been made for a calendar year, and Treasury determines that insured loss information is sufficiently developed and credible to serve as a basis for calculating recoupment amounts, Treasury will make an initial determination of any mandatory or discretionary recoupment amounts for that calendar year.

(b)(1) Within 90 days after certification of an act of terrorism, the Secretary shall publish in the **Federal Register** an estimate of aggregate insured losses which shall be used as the basis for initially determining whether mandatory recoupment will be required.

(2) If at any time Treasury projects that payments for the Federal share of compensation will be made for a calendar year, and that in order to meet the collection timing requirements of section 103(e)(7)(E) of the Act it is necessary to use an estimate of such payments as a basis for calculating recoupment amounts, Treasury will make an initial determination of any mandatory recoupment amounts for that calendar year.

(c) Following the initial determination of recoupment amounts for a calendar year, Treasury will recalculate any mandatory or discretionary recoupment amount as necessary and appropriate, and at least annually, until a final recoupment amount for the calendar year is determined. Treasury will compare any recalculated recoupment amount to amounts already remitted and/or to be remitted to Treasury for a Federal terrorism policy surcharge previously established to determine whether any additional amount will be recouped by Treasury.

(d) For the purpose of determining initial or recalculated recoupment amounts, Treasury may issue a data call to insurers for insurer deductible and insured loss information by calendar year. Treasury's determination of the aggregate amount of insured losses from Program Trigger Events of all insurers for a calendar year will be based on the amounts reported in response to a data call and any other information Treasury in its discretion considers appropriate. Submission of data in response to a data call shall be on a form promulgated by Treasury.

§ 50.92 Establishment of Federal terrorism policy surcharge.

(a) Treasury will establish the Federal terrorism policy surcharge based on the following factors and considerations:

(1) In the case of a mandatory recoupment amount, the requirement to collect 140 percent of that amount;

(2) The total dollar amount to be recouped as a percentage of the latest available annual aggregate industry direct written premium information;

(3) The adjustment factors for terrorism loss risk-spreading premiums described in section 103(e)(8)(D) of the Act;

(4) The annual 3 percent limitation on terrorism loss risk-spreading premiums collected on a discretionary basis as provided in section 103(e)(8)(C) of the Act;

(5) A preferred minimum initial assessment period of one full year and subsequent extension periods in full year increments;

(6) The collection timing requirements of section 103(e)(8)(E) of the Act;

(7) The likelihood that the amount of the Federal terrorism policy surcharge may result in the collection of an aggregate recoupment amount in excess of the planned recoupment amount; and

(8) Such other factors as the Secretary considers appropriate to take into account.

(b) The Federal terrorism policy surcharge shall be the obligation of the policyholder and is payable to the insurer with the premium for a property and casualty insurance policy in effect during the assessment period established by Treasury. See § 50.94(c).

§ 50.93 Notification of recoupment.

(a) Treasury will provide notifications of recoupment through publication of notices in the **Federal Register** or in another manner Treasury deems appropriate, based upon the circumstances of the certified act(s) of terrorism under consideration.

(b) Treasury will provide reasonable advance notice to insurers of any initial Federal terrorism policy surcharge effective date. This effective date shall be January 1 of the calendar year following publication of the notice, unless such date would not provide for sufficient notice of implementation while meeting the collection timing requirements of section 103(e)(8)(E) of the Act.

(c) Treasury will provide reasonable advance notice to insurers of any modification or cessation of the Federal terrorism policy surcharge.

(d) Treasury will provide notification to insurers annually as to the continuation of the Federal terrorism policy surcharge.

§ 50.94 Collecting the surcharge.

(a) Insurers shall collect a Federal terrorism policy surcharge from policyholders as required by Treasury.

(b) Policies subject to the Federal terrorism policy surcharge are those for which direct written premium is reported on commercial lines of business on the NAIC's Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14) as provided in § 50.4(w)(1), or equivalently reported.

(c) For policies subject to the Federal terrorism policy surcharge, the surcharge shall be imposed and collected on a written premium basis for policies that become effective or renew during the assessment period. All new, renewal, mid-term, and audit premiums for a policy term are subject to the surcharge in effect on the policy term effective date. Notwithstanding this paragraph, if the premium for a policy term that would otherwise be subject to the surcharge is revised after the end of the reporting period described in § 50.95(e), then any additional premium attributable to such revision is not subject to the Surcharge. For purposes of this Subpart:

(1) Written premium basis means the premium amount charged a policyholder by an insurer for property and casualty insurance, including all premiums, policy expense constants and fees defined as premium pursuant to the Statements of Statutory Accounting Principles established by the NAIC, as adopted by the state for which the premium will be reported.

(2) In the case of a policy providing multiple insurance coverages, if an insurer cannot identify the premium amount charged a policyholder specifically for property and casualty insurance under the policy, then:

(i) If the insurer estimates that the portion of the premium amount charged for coverage other than property and casualty insurance is *de minimis* to the total premium for the policy, the insurer may impose and collect from the policyholder a surcharge amount based on the total premium for the policy, but

(ii) If the insurer estimates that the portion of the premium amount charged for coverage other than property and casualty insurance is not *de minimis*, the insurer shall impose and collect from the policyholder a Surcharge amount based on a reasonable estimate of the premium amount for the property and casualty insurance coverage under the policy.

(3) The Federal terrorism policy surcharge is not considered premium.

(d) A policyholder must pay the applicable Federal terrorism policy surcharge when due. The insurer shall have such rights and remedies to enforce the collection of the surcharge that are the equivalent to those that exist under applicable state or other law for nonpayment of premium.

(e) When an insurer returns an unearned premium, or otherwise refunds premium to a policyholder, it shall also return any Federal terrorism policy surcharge collected that is attributable to the refunded unearned premium. Notwithstanding this paragraph, if the written premium for a policy is revised and refunded after the end of the reporting period described in § 50.95(e), then the insurer is not required to refund any Surcharge that is attributable to the refunded premium.

(f) Notwithstanding paragraphs (a), (b), and (c) of this section, if the expense of collecting the Federal terrorism policy surcharge from all policyholders of an insurer during an assessment period exceeds the amount of the Surcharges anticipated to be collected, such insurer may satisfy its obligation to collect by omitting actual collection and instead remitting to Treasury the amount otherwise due.

(g) The Federal terrorism policy surcharge is repayment of Federal financial assistance in an amount required by law. No fee or commission shall be charged on the Federal terrorism policy surcharge.

§ 50.95 Remitting the surcharge.

(a) Each insurer shall report direct written premium and Federal terrorism policy surcharges to Treasury on a monthly and annual basis during the assessment period. Reporting will be on a form prescribed by Treasury and will be due according to the following schedule:

(1) *Monthly:* From the beginning of the assessment period through November, on the last business day of the calendar month following the month for which premium is reported, and

(2) *Annually:* March 1 for the prior calendar year.

(b) The monthly statements provided to Treasury will include the following:

(1) Cumulative calendar year direct written premium adjusted for premium not subject to the Federal terrorism policy surcharge, summarized by policy year.

(2) The aggregate Federal terrorism policy surcharge amount calculated by applying the established surcharge percentage to the insurer's adjusted direct written premium by policy year.

(3) Insurer certification of the submission.

(c) The annual statements to be provided to Treasury will include the following:

(1) Direct written premium, adjusted for premium not subject to the Federal terrorism policy surcharge, summarized by policy year and by commercial line of insurance as specified in § 50.4(w).

(2) The aggregate Federal terrorism policy surcharge amount calculated by applying the established surcharge percentage to the insurer's adjusted direct written premium by policy year.

(3) In the case of an insurer that has chosen not to collect the Federal terrorism policy surcharge from its policyholders as provided in § 50.94(f), a certification that the expense of collecting the Surcharge during the assessment period would have exceeded the amount of the surcharges collected over the assessment period.

(4) Insurer certification of the submission.

(d) The calculated aggregate Federal terrorism policy surcharge amount, as described in paragraphs (b)(2) and (c)(2) of this section, shall be remitted to Treasury upon submission of each monthly and annual statement. Through its submitted statements, an insurer obtains credit for a refund of any Federal terrorism policy surcharge previously remitted to Treasury that was subsequently returned by the insurer to a policyholder as attributable to refunded premium under § 50.94(e). A negative calculated amount in a monthly or annual statement indicates payment from Treasury is due to the insurer.

(e) Reporting shall continue for the one-year period following the end of the assessment period established by Treasury, unless otherwise permitted by Treasury.

§ 50.96 Insurer responsibility.

Notwithstanding § 50.4(o), for purposes of the collection, reporting and remittance of Federal terrorism policy surcharges to Treasury, the definition of insurer shall not include any affiliate of the insurer.

Subpart K—Federal Cause of Action; Approval of Settlements

§ 50.100 Federal cause of action and remedy.

(a) *General.* If the Secretary certifies an act as an act of terrorism pursuant to Subpart G of this Part, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, pursuant to section 107 of the Act, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in paragraph (d) of this section.

(b) *Jurisdiction.* For each determination described in paragraph (a) of this section, not later than 90 days after the Secretary certifies an act as an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate a single district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to section 107 of the Act.

(c) *Effective period.* The exclusive Federal cause of action and remedy described in paragraph (a) of this section shall exist only for causes of action for property damage, personal injury, or death that arise out of or result from acts of terrorism during the effective period of the Program.

(d) *Rights not affected.* Nothing in section 107 of the Act or this Subpart shall in any way:

(1) Limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism;

(2) Affect any party's contractual right to arbitrate a dispute; or

(3) Affect any provision of the Air Transportation Safety and System Stabilization Act (Pub. L. 107–42; 49 U.S.C. 40101 note).

§ 50.101 State causes of action preempted.

All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under state law are preempted, except that, pursuant to section 107(b) of the Act, nothing in this section shall limit in any way the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits the act of terrorism certified by the Secretary.

§ 50.102 Advance approval of settlements.

(a) *Mandatory submission of settlements for advance approval.* Pursuant to section 107(a)(6) of the Act, an insurer shall submit to Treasury for advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to include in its aggregate insured losses for purposes of calculating the insurer deductible or the Federal share of compensation of its insured losses under the Program, when:

(1) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving personal injury or death in the aggregate is $2 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled; or

(2) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving property damage (including loss of use) in the aggregate is $10 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled.

(b) *Discretionary review of other settlements.* Notwithstanding paragraph (a) of this section, Treasury may require that an insurer submit for review and advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to include in its aggregate insured losses for purposes of calculating the insurer deductible or the Federal share of compensation of its insured losses where the settlement amounts are below the applicable monetary thresholds identified in paragraphs (a)(1) and (2) of this section.

(c) *Factors.* In determining whether to approve a proposed settlement, Treasury will consider the nature of the loss, the facts and circumstances surrounding the loss, and other factors such as whether:

(1) The proposed settlement compensates for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy, as certified by the insurer pursuant to § 50.103(d)(2);

(2) Any amount of the proposed settlement is attributable to punitive or exemplary damages intended to punish or deter (whether or not specifically so described as such damages);

(3) The settlement amount offsets amounts received from the United States pursuant to any other Federal program;

(4) The settlement amount does not include any items such as fees and expenses of attorneys, experts, and other professionals that have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated; and

(5) Any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement, including the information contained in § 50.103.

(d) *Settlement without seeking advance approval or despite disapproval.* If an insurer settles a cause of action or agrees to the settlement of a cause of action without submitting the proposed settlement for Treasury's advance approval in accordance with paragraph (a) or (b) of this section, and in accordance with § 50.103 or despite Treasury's disapproval of the proposed settlement, the insurer will not be entitled to include the paid settlement amount (or portion of the settlement amount, to the extent partially disapproved) in its aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses, unless the insurer can demonstrate, to the satisfaction of Treasury, extenuating circumstances.

§ 50.103 Procedure for requesting approval of proposed settlements.

(a) *Submission of notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at ***https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx*** following any certification of an act of terrorism pursuant to section 102(1) of the Act.

(b) *Complete notice.* Treasury will review requests for advance approval and determine whether additional information is needed to complete the notice.

(c) *Treasury response or deemed approval.* Within 30 days after Treasury's receipt of a complete notice, or as extended in writing by Treasury, Treasury may issue a written response and indicate its partial or full approval or rejection of the proposed settlement. If Treasury does not issue a response within 30 days after Treasury's receipt of a complete notice, unless extended in writing by Treasury, the request for advance approval is deemed approved by Treasury. Any settlement is still subject to review under the claim procedures pursuant to § 50.80.

(d) *Notice format.* A notice of a proposed settlement should be entitled, "Notice of Proposed Settlement—Request for Approval," and should provide the full name and address of the submitting insurer and the name, title, address, and telephone number of the designated contact person. An insurer must provide all relevant information, including the following, as applicable:

(1) A brief description of the claim against the insured, the amount of the claim, the operative policy terms, and defenses to coverage;

(2) A certification by the insurer that the settlement is for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy;

(3) A brief description of all damages allegedly sustained and an itemized statement of all damages by category (*i.e.*, actual, economic and non-economic loss, punitive damages, etc.);

(4) A statement from the insurer or its attorney in support of the settlement;

(5) The total dollar amount of the proposed settlement and the amount of the proposed settlement which is an insured loss;

(6) Indication as to whether the settlement was negotiated by counsel;

(7) The amount to be paid that will compensate for any items such as fees and expenses of attorneys, experts, and other professionals for their services and expenses related to the insured loss and/or settlement and the net amount to be received by the third-party after such payment;

(8) The amount(s) received from the United States pursuant to any other Federal program(s) for compensation of insured losses related to an act of terrorism;

(9) The proposed terms of the written settlement agreement, including release language and subrogation terms;

(10) Other relevant agreements, including:

(i) Admissions of liability or insurance coverage;

(ii) Determinations of the number of occurrences under a commercial property and casualty insurance policy;

(iii) The allocation of paid amounts or amounts to be paid to certain policies, or to a specific policy, coverage and/or aggregate limits;

(iv) Any other agreement that may affect the payment or amount of the Federal share of compensation to be paid to the insurer; and

(v) Any other relevant agreement requested by Treasury.

(11) A statement indicating whether the proposed settlement has been approved by the Federal court or is subject to such approval and whether such approval is expected or likely; and

(12) Such other information that is related to the insured loss as may be requested by Treasury that it deems necessary to evaluate the proposed settlement.

§ 50.104 Subrogation.

An insurer shall not waive its rights of subrogation under its property and casualty insurance policy with respect to any losses the payment of which the insurer intends to include in its insurer deductible or the aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses and shall, unless upon request the United States agrees in writing to forbear from exercising such right, preserve the subrogation right of the United States as provided by section 107(c) of the Act by not taking any action that would prejudice the subrogation right of the United States.

Subpart L—Cap on Annual Liability

§ 50.110 Cap on annual liability.

Pursuant to section 103 of the Act, if the aggregate insured losses exceed $100,000,000,000 during a calendar year:

(a) The Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000;

(b) An insurer that has met its insurer deductible shall not be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000; and

(c) The Secretary shall determine the *pro rata* share of insured losses to be paid by each insurer that incurs insured losses under the Program.

§ 50.111 Notice to Congress.

Pursuant to section 103(e)(3) of the Act, the Secretary shall provide an initial notice to Congress within 15 days of the certification of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000 for the calendar year in which the event occurs. Such initial estimate may be based on insured loss amounts as compiled by insurance industry statistical organizations, data previously collected by the Secretary, and any other information the Secretary in his or her discretion considers appropriate. The Secretary shall also notify Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any calendar year.

§ 50.112 Determination of *pro rata* share.

(a) *Pro rata loss percentage (PRLP)* is the percentage determined by the Secretary to be applied by an insurer against the amount that would otherwise be paid by the insurer under the terms and conditions of an insurance policy providing property and casualty insurance under the Program if there were no cap on annual liability under section 103(e)(2)(A) of the Act.

(b) Except as provided in paragraph (e) of this section, if Treasury estimates that aggregate insured losses may exceed the cap on annual liability for a calendar year, then Treasury will determine a PRLP. The PRLP applies to insured loss payments by insurers for insured losses incurred in the subject calendar year, as specified in § 50.113, from the effective date of the PRLP, as established by Treasury, until such time as Treasury provides notice that the PRLP is revised. Treasury will determine the PRLP based on the following considerations:

(1) Estimates of insured losses from insurance industry statistical organizations;

(2) Any data calls issued by Treasury (see § 50.114);

(3) Expected reliability and accuracy of insured loss estimates and likelihood that insured loss estimates could increase;

(4) Estimates of insured losses and expenses not included in available statistical reporting;

(5) Such other factors as the Secretary considers important.

(c) Treasury shall provide notice of the determination of the PRLP through publication in the **Federal Register**, or in another manner Treasury deems appropriate, based upon the circumstances of the act of terrorism under consideration.

(d) As appropriate, Treasury will determine any revision to a PRLP based on the same considerations listed in paragraph (b) of this section, and will provide notice for its application to insured loss payments.

(e) If Treasury estimates based on an initial act of terrorism or subsequent act of terrorism within a calendar year that aggregate insured losses may exceed the cap on annual liability, but an appropriate PRLP cannot yet be determined, Treasury will provide notification advising insurers of this circumstance and, after consulting with the relevant state authorities, may initiate the action described in either paragraph (e)(1) or (2) of this section.

(1) *Hiatus in payments.* Call a hiatus in insurer loss payments for insured losses of up to two weeks. In such a circumstance, Treasury will determine a PRLP as quickly as possible. The PRLP, as later determined, will be effective retroactively as of the start of the hiatus. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the PRLP.

(2) *Determine an interim PRLP.* (i) An interim PRLP is an amount determined without the availability of information necessary for consideration of all factors listed in § 50.112(b). It is a conservatively low percentage amount determined in order to facilitate initial partial claim payments by insurers after an act of terrorism and prior to the time that information becomes available to determine a PRLP based on consideration of the factors listed in § 50.112(b).

(ii) In such a circumstance, Treasury will determine a PRLP to replace the interim PRLP as quickly as possible. The PRLP, as later determined, will be effective retroactively as of the effective date of the interim PRLP. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the interim PRLP, or as later replaced by the PRLP as appropriate.

§ 50.113 Application of *pro rata* share.

An insurer shall apply the PRLP to determine the *pro rata* share of each insured loss to be paid by the insurer on all insured losses in the absence of an agreement on a complete and final settlement as evidenced by a signed settlement agreement or other means reviewable by a third party as of the effective date established by Treasury. Payments based on the application of the PRLP and determination of the *pro rata* share satisfy the insurer's liability for payment under the Program. Application of the PRLP and the determination of the *pro rata* share are the exclusive means for calculating the amount of insured losses for Program purposes. The *pro rata* share is subject to the following:

(a) The *pro rata* share is determined based on the estimated or actual final claim settlement amount that would otherwise be paid.

(b) *All policies.* If partial payments have already been made as of the effective date of the PRLP, then the *pro rata* share for that loss is the greater of the amount already paid as of the effective date of the PRLP or the amount computed by applying the PRLP to the estimated or actual final claim settlement amount that would otherwise be paid.

(c) *Certain workers' compensation insurance policies.* If an insurer's payments under a workers' compensation policy cumulatively exceed the amount computed by applying the PRLP to the estimated or actual final claim settlement amount that would otherwise be paid because such estimated or actual final settlement amount is reduced from a previous estimate, then the insurer may request a review and adjustment by Treasury in the calculation of the Federal share of compensation. In requesting such a review, the insurer must submit information to supplement its Certification of Loss demonstrating a reasonable estimate invalidated by unexpected conditions differing from prior assumptions including, but not limited to, an explanation and the basis for the prior assumptions.

(d) If an insurer has not yet made payments in excess of its insurer deductible, the rules in this paragraph apply.

(1) If the insurer estimates that it will exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer shall apply the PRLP as of the effective date specified in § 50.112(b).

(2)(i) If the insurer estimates that it will not exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer may make payments on the same basis as prior to the effective date of the PRLP. The insurer may also make payments on the basis of applying some other *pro rata* amount it determines that is greater than the PRLP, where the insurer estimates that application of such other *pro rata* amount will result in it not exceeding its insurer deductible. The insurer remains liable for losses in accordance with § 50.115(c).

(ii) If an insurer estimates that it will not exceed its insurer deductible and has made payments on the basis provided in paragraph (d)(2)(i) of this section, but thereafter reaches its insurer deductible, then the insurer shall apply the PRLP to any remaining insured losses. When such an insurer submits a claim for the Federal share of compensation, the amount of the insurer's losses will be deemed to be the amount it would have paid if it had applied the PRLP as of the effective date, and the Federal share of compensation will be calculated on that amount. However, an insurer may request an exception if it can demonstrate that its estimate was invalidated as a result of insured losses from a subsequent act of terrorism.

§ 50.114 Data call authority.

For the purpose of determining initial or recalculated PRLPs, Treasury may issue a data call to insurers for insured loss information, seeking information in addition to any information provided to Treasury under subparts F and H of this part.

§ 50.115 Final amount.

(a) Treasury shall determine if, as a final proration, remaining insured loss payments, as well as adjustments to previous insured loss payments, can be made by insurers based on an adjusted PLRP, and aggregate insured losses still remain within the cap on annual liability. In such a circumstance, Treasury will notify insurers as to the final PRLP and its application to insured losses.

(b) If paragraph (a) of this section applies, Treasury may require, as part of the insurer submission for the Federal share of compensation for insured losses, a supplementary explanation regarding how additional payments will be provided on previously settled insured losses.

(c) An insurer that has prorated its insured losses, but that has not met its insurer deductible, remains liable for loss payments that in the aggregate bring the insurer's total insured loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible.

Dated: March 21, 2016.

Amias Moore Gerety,

Acting Assistant Secretary for Financial Institutions.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on Petitions to List the Common Thresher Shark and Bigeye Thresher Shark as Threatened or Endangered Under the Endangered Species Act (ESA); Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 141219999–6234–02]

RIN 0648–XD680

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on Petitions to List the Common Thresher Shark and Bigeye Thresher Shark as Threatened or Endangered Under the Endangered Species Act (ESA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 12-month finding and availability of status review report.

SUMMARY: NMFS has completed comprehensive status reviews under the Endangered Species Act (ESA) for two species of thresher shark in response to petitions to list those species. These species are the common thresher shark (*Alopias vulpinus*) and the bigeye thresher shark (*Alopias superciliosus*). Based on the best scientific and commercial information available, including the status review report (Young *et al.*, 2015), and after taking into account efforts being made to protect these species, we have determined that the common thresher (*A. vulpinus*) and bigeye thresher (*A. superciliosus*) do not warrant listing at this time. We conclude that neither species is currently in danger of extinction throughout all or a significant portion of its range nor likely to become so within the foreseeable future.

DATES: This finding was made on April 1, 2016.

ADDRESSES: The status review report for common and bigeye thresher sharks is available electronically at: *http://www.nmfs.noaa.gov/pr/species/fish/common-thresher-shark.html* and *http://www.nmfs.noaa.gov/pr/species/fish/bigeye-thresher-shark.html*. You may also receive a copy by submitting a request to the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, Attention: Thresher Shark 12-month Finding.

FOR FURTHER INFORMATION CONTACT: Chelsey Young, NMFS, Office of Protected Resources, (301) 427–8491.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2014, we received a petition from Friends of Animals to list the common thresher shark (*Alopias vulpinus*) as threatened or endangered under the ESA throughout its entire range, or, as an alternative, to list 6 distinct population segments (DPSs) of the common thresher shark, as described in the petition, as threatened or endangered, and designate critical habitat. On April 27, 2015, we received a separate petition from Defenders of Wildlife to list the bigeye thresher shark as threatened or endangered throughout its range, or, as an alternative, to list any identified DPSs, should we find they exist, as threatened or endangered species pursuant to the ESA, and to designate critical habitat. We found that the petitioned actions may be warranted for both species; on March 3, 2015, and August 11, 2015, we published positive 90-day findings for the common thresher (80 FR 11379) and bigeye thresher (80 FR 48061), respectively, announcing that the petitions presented substantial scientific or commercial information indicating the petitioned actions of listing each species may be warranted, and explaining the basis for those findings. We also announced the initiation of a status review of both species, as required by Section 4(b)(3)(a) of the ESA, and requested information to inform the agency's decision on whether the species warranted listing as endangered or threatened under the ESA.

Listing Species Under the Endangered Species Act

We are responsible for determining whether the common and bigeye thresher sharks are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a "species" under Section 3 of the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines species to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a DPS of a taxonomic species (61 FR 4722). The joint DPS policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs.

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus, in the context of the ESA, the Services interpret an "endangered species" to be one that is presently at risk of extinction. A "threatened species," on the other hand, is not currently at risk of extinction, but is likely to become so in the foreseeable future. In other words, a key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either now (endangered) or in the foreseeable future (threatened). The statute also requires us to determine whether any species is endangered or threatened as a result of any of the following five factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence (ESA, section 4(a)(1)(A)–(E)). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any State or foreign nation or political subdivision thereof to protect the species. In evaluating the efficacy of existing protective efforts, we rely on the Services' joint *Policy on Evaluation of Conservation Efforts When Making Listing Decisions* ("PECE"; 68 FR 15100; March 28, 2003) for any conservation efforts that have not been implemented, or have been implemented but not yet demonstrated effectiveness.

Status Review

We convened a team of agency scientists to conduct the status review for the common and bigeye thresher sharks and prepare a report. The status review report of common and bigeye thresher sharks (Young *et al.*, 2015) compiles the best available information on the status of both species as required by the ESA, provides an evaluation of the discreteness and significance of populations in terms of the DPS policy, and assesses the current and future extinction risk for both species, focusing primarily on threats related to the five statutory factors set forth above. We appointed a biologist in the Office of Protected Resources Endangered Species Conservation Division to undertake a scientific review of the life history and ecology, distribution, abundance, and threats to common and bigeye thresher sharks. Next, we convened a team of biologists and shark experts (hereinafter referred to as the Extinction Risk Analysis (ERA) team) to conduct extinction risk analyses for both species, using the information in the scientific review. The ERA team was comprised of a fishery management specialist from NMFS' Highly Migratory Species Management Division, four research fishery biologists from NMFS' Southeast, Northeast, Southwest, and Pacific Island Fisheries Science Centers, and two natural resource management specialists with NMFS' Office of Protected Resources. The ERA team had group expertise in shark biology and ecology, population dynamics, highly migratory species management, and stock assessment science. The status review report presents the ERA team's professional judgment of the extinction risk facing common and bigeye thresher sharks but makes no recommendation as to the listing status of the species. The status review report is available electronically at *http://www.nmfs.noaa.gov/pr/species/fish/common-thresher-shark.html* and *http://www.nmfs.noaa.gov/pr/species/fish/bigeye-thresher-shark.html.*

The status review report was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). The status review report was peer reviewed by three independent specialists selected from the academic and scientific community, with expertise in shark biology, conservation and management, and knowledge of thresher sharks. The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the status review as well as the findings made in the "Assessment of Extinction Risk" section of the report. All peer reviewer comments were addressed prior to finalizing the status review report.

We subsequently reviewed the status review report, its cited references, and peer review comments, and believe the status review report, upon which this 12-month finding is based, provides the best available scientific and commercial information on the common and bigeye thresher sharks. Much of the information discussed below on thresher shark biology, distribution, abundance, threats, and extinction risk is attributable to the status review report. However, we have independently applied the statutory provisions of the ESA, including evaluation of the factors set forth in Section 4(a)(1)(A)–(E), our regulations regarding listing determinations, and our DPS policy in making the 12-month finding determination.

Life History, Biology, and Status of the Petitioned Species Common Thresher Shark (*Alopias vulpinus*)

Taxonomy and Species Description

All thresher sharks belong to the family Alopiidae, genus *Alopias,* and are classified as mackerel sharks (Order Lamniformes). Thresher sharks are recognized by their elongated upper caudal lobe (tail fin) almost equal to its body length, which is unique to the Alopiidae family. There are currently three recognized species of thresher shark: common thresher (*Alopias vulpinus*), bigeye thresher (*Alopias superciliosus*), and pelagic threhser (*Alopis pelagicus*). Eitner (1995) used allozymes to infer phylogenetic relationships in the genus *Alopias,* and suggested the existence of an unrecognized fourth thresher shark species. Results from a recent genetics study (Cardeñosa *et al.,* 2014) suggest that this fourth thresher shark species may be a second species of pelagic thresher shark; however, more information is needed to confirm this. The common thresher shark (*Alopias vulpinus*) is the largest of the thresher shark species and is distinguished from other thresher sharks by the presence of labial furrows, the origin of the second dorsal fin posterior to the end of the pelvic fin free rear tip, and the white color of the abdomen extending upward over the pectoral fin bases, and again rearward of the pelvic fins. The common thresher shark has moderately large eyes, a broad head, short snout, narrow tipped pectoral fins, and lateral teeth without distinct cusplets. Dorsal coloration may vary from brown, blue slate, slate gray, blue gray, and dark lead to nearly black, with a metallic, often purplish, luster. The lower surface of the snout (forward of the nostrils) and pectoral fin bases are generally not white and may be the same color as the dorsal surface (Compagno, 1984; Goldman, 2009).

Current Distribution

The common thresher shark is found throughout the world in temperate and tropical seas, with a noted tolerance for cold waters as well; however, highest concentrations tend to occur in coastal, temperate waters (Moreno *et al.,* 1989; Goldman, 2009). In the North Atlantic, common thresher sharks occur from Newfoundland, Canada, to Cuba in the west and from Norway and the British Isles to the African coast in the east (Gervelis and Natanson, 2013). Landings along the South Atlantic coast of the United States and in the Gulf of Mexico are rare. Common thresher sharks also occur along the Atlantic coast of South America from Venezuela to southern Argentina. In the eastern Atlantic, the common thresher ranges from the central coast of Norway south to, and including, the Mediterranean Sea and down the African coast to the Ivory Coast. They appear to be most abundant along the Iberian coastline, particularly during spring and fall. Specimens have also been recorded at Cape Province, South Africa (Goldman, 2009). In the Indian Ocean, the common thresher is found along the east coast of Somalia, and in waters adjacent to the the Maldive Islands and Chagos archipelago. The species is also present off Australia (Tasmania to central Western Australia), Sumatra, Pakistan, India, Sri Lanka, Oman, Kenya, the northwestern coast of Madagascar and South Africa. A few specimens have been taken from southwest of the Chagos archipelago, the Gulf of Aden, and northwest Red Sea. However, Romanov (2015) raises serious questions regarding the occurrence of common thresher in the equatorial and northern tropical Indian Ocean, suggesting the species demonstrates strong fidelity to subtropical and temperate coasts of South Africa and Australia. In the western Pacific Ocean, the range of common thresher includes southern Japan, Korea, China, parts of Australia and New Zealand. They are also present around several Pacific Islands, including New Caledonia, Society Islands, Fanning Islands, Hawaii and American Samoa. In the Northeast Pacific Ocean, the geographic range of common thresher sharks extends from Goose Bay, British Columbia, Canada to the Baja Peninsula, Mexico and out to about 200 miles (322 km) from the coast (Goldman, 2009). Additionally, they are found off Chile and records exist from Panama (Compagno, 1984; Ebert *et al.,* 2014).

Habitat Use and Movement

The common thresher shark is a highly migratory, pelagic species of shark that is both coastal, ranging over continental and insular shelves, and epipelagic, ranging far from land, though they are most abundant near land approximately 40–50 nautical miles (74–93 km) from shore (Strasburg, 1958; Bedford, 1992). Although the species is migratory, *A. vulpinus* appears to exhibit little to no immigration and emigration between geographic areas; namely between the Pacific and Northwest Atlantic populations (Gubanov, 1972; Moreno *et al.*, 1989; Bedford, 1992; Trejo, 2005). In the eastern Pacific, conventional tagging data (N = 110 tag returns) from NMFS' Southwest Fisheries Science Center (SWFSC) show that common threshers often migrate between the United States and Mexico on the West Coast. While these data confirm active transboundary migration in this species between the United States and Mexico, there is no evidence to support regular migration beyond the West Coast of North America. Similarly, in the Atlantic, mark recapture data (number tagged = 203 and recaptures = 4) from the NMFS Cooperative Shark Tagging Program (CSTP) between 1963 and 2013 provide supporting evidence that common thresher sharks do not make transatlantic movements (Kohler *et al.*, 1998; NMFS, unpublished data). The range of movement for common threshers based on CSTP data was relatively small, with an observed maximum straight-line distance travelled of 86 nautical miles (nmi; 159 km) in the Northwest Atlantic and 271 nmi (502 km) in the Northeast Atlantic.

Several studies have shown that common thresher sharks make daily vertical migrations, moving to deeper water during the day, with a maximum depth reported to 640 m in Australia. In the Marshall Islands, common thresher sharks showed a preference for an optimum swimming depth, water temperature, salinity and dissolved oxygen range of 160–240 m, 18–20 °C, 34.5–34.8 ppt and 1.0–1.5 ml/l, respectively, during daytime (Cao *et al.*, 2011). These studies indicate that common thresher sharks may spend most of the day at deeper depths below the thermocline (≤200 m) and most of the night in shallower waters between 0–200 m. Juveniles occupy relatively shallow water over the continental shelf (<200 m), while adults are found in deeper water (up to at least 366 m, with dive depths up to at least 640 m), but rarely range beyond 200 nmi (321.87 km) from the coast. Both adults and juveniles are associated with highly biologically productive waters, found in regions of upwelling or intense mixing (PFMC, 2003; Smith *et al.*, 2008).

Diet

Common thresher sharks feed at mid-trophic levels on a mix of small pelagic fish and cephalopods (Cortés, 1999; Bowman *et al.*, 2000; Estrada *et al.*, 2003; MacNeil *et al.*, 2005). Studies from the U.S. West Coast and southern coast of Australia showed common thresher sharks exhibit narrower dietary preferences in comparison to other local pelagic shark species (Preti *et al.*, 2012; Rogers *et al.*, 2012). Given their more specialized diet, they are more likely to exert top-down effects on their prey, although this remains to be demonstrated. Based on studies at NMFS' SWFSC, the top six prey species, in order, are northern anchovy, Pacific sardine, Pacific hake, Pacific mackerel, jack mackerel, and market squid (Preti *et al.*, 2001; 2004; 2012).

Reproduction

Compared to the other *Alopias* species, the common thresher (*A. vulpinus*) has the fastest growth rate and also attains the largest size, and thus matures at an earlier age, between 5 and 12 years depending on the geographic location (Smith *et al.*, 2008; Gervelis and Natanson, 2013). In terms of size, females attain maturity generally around 315–400 cm total length (TL) while males reach maturity at similar sizes (generally around 314–420 cm TL) (see Table 1 in Young *et al.*, 2015). Female common thresher sharks utilize a mode of reproduction of aplacental ovoviviparity and oophagy (*i.e.*, eggs are deposited into one of two uterine horns and developing embryos are nourished by feeding on other eggs), and gestation is thought to be around 9 months (PFMC, 2003; Smith *et al.*, 2008). Litter sizes are typically small, and may vary depending on geographic location; they range from only 2 pups in the Indian Ocean to between 3 and 7 in the Northeast Atlantic, while 3–4 pups are common in the Eastern Pacific (with occasional litters of up to 6 pups off California). Pupping is thought to occur in the springtime, with mating thought to occur in the summer in both the Northeast Atlantic and Eastern Pacific. However, pregnant females in the western Indian Ocean have been observed in August and November, indicating that birth of young common thresher sharks may occur throughout the year in this area (Goldman, 2009).

Size and Growth

Historical records indicate the common thresher can reach maximum lengths of 690–760 cm TL (Bigelow and Schroeder, 1948; Hart, 1973). More recent studies report *A. vulpinus* reaching 573 cm TL and possibly up to 600 cm depending on sex and geographic location (Smith *et al.*, 2008; Goldman, 2009). The lifespan of common threshers has been broadly estimated to be between 15 and 50 years (Gervelis and Natanson, 2013); however, most recently, longevity of common threshers was estimated to be 38 years based on bomb radiocarbon validation (Natanson *et al.*, in press). Male common thresher sharks are thought to grow faster than females (with a growth coefficient, k, of 0.17/year for males and 0.09/year for females) but reach a smaller asymptotic size (225.4 cm fork length (FL) for males versus 274.5 cm FL for females) (Gervelis and Natanson, 2013). Using life history parameters from the eastern North Pacific, Cortés *et al.* (2012) estimated productivity of the common thresher shark, determined as intrinsic rate of population increase (*r*), to be 0.121 per year (median). However, it should be noted that this study relied on an earlier estimated age at maturity for *A. vulpinus* females from the eastern North Pacific (*i.e.*, 5–6 years) and did not take into account more recent age at maturity estimates calculated for *A. vulpinus* females in the Northwest Atlantic (*i.e.*, 12 years), which may slightly decrease the species' overall productivity. Overall, the best available data indicate that the common thresher shark is a long-lived species (at least 20–40 years) and can be characterized as having relatively low productivity (based on the Food and Agriculture Organization of the United Nations (FAO) productivity indices for exploited fish species, where $r < 0.14$ is considered low productivity), making them generally vulnerable to depletion and potentially slow to recover from overexploitation.

Current Status

Common thresher sharks can be found worldwide, with no present indication of a range contraction. Although potentially rare in a large portion of its range and generally not targeted, they are caught as bycatch in many global fisheries, including bottom and pelagic longline tuna and swordfish fisheries, purse seine fisheries, coastal gillnet fisheries, and artisanal fisheries. Common thresher sharks are more commonly utilized for their meat than fins, as they are a preferred species for human consumption; however, they are also valuable as incidental catch for the international shark fin trade.

In 2009, the International Union for Conservation of Nature (IUCN) considered the common thresher shark to be Vulnerable globally, based on an assessment by Goldman *et al.* (2009) and its own criteria (A2bd, 3bd and 4bd), and placed the species on its "Red List." Under criteria A2bd, 3bd and 4bd, a species may be classified as Vulnerable when its "observed, estimated, inferred or suspected" population size is reduced by 30 percent or more over the last 10 years, the next 10 years, or any 10-year time period, or over a 3-generation period, whichever is the longer, where the reduction or its causes may not have ceased or may not be understood or may not be reversible, based on an index of abundance appropriate to the taxon and/or the actual or potential levels of exploitation. The IUCN's justification for the categorization is based on the species' declining populations. The IUCN notes that the species' regional trends, slow life history characteristics (hence low capacity to recover from moderate levels of exploitation), and high levels of largely unmanaged and unreported mortality in target and bycatch fisheries, give cause to suspect that the population has decreased by over 30 percent and meets the criteria to be categorized as Vulnerable globally. As a note, the IUCN classification for the common thresher shark alone does not provide the rationale for a listing recommendation under the ESA, but the classification and the sources of information that the classification is based upon are evaluated in light of the standards on extinction risk and impacts or threats to the species.

Distinct Population Segment Analysis

As described above, the ESA's definition of "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature." As stated in the joint DPS policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted. NMFS determined at the 90-day finding stage that the petition to list the common thresher shark as six DPSs (Eastern Central Pacific, Indo-West Pacific, Northwest and Western Central Atlantic, Southwest Atlantic, Mediterranean, and Northeast Atlantic) did not present substantial scientific or commercial information to support the identification of these particular DPSs. As such, we conducted the extinction risk analysis on the global common thresher shark population.

Assessment of Extinction Risk

The ESA (Section 3) defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." A threatened species is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Neither we nor the USFWS have developed formal policy guidance about how to interpret the definitions of threatened and endangered with respect to what it means to be "in danger of extinction." We consider the best available information and apply professional judgment in evaluating the level of risk faced by a species in deciding whether the species is threatened or endangered. We evaluate both demographic risks, such as low abundance and productivity, and threats to the species, including those related to the factors specified in ESA section 4(a)(1)(A)–(E).

Methods

As we described previously, we convened an ERA team to evaluate extinction risk to the species. This section discusses the methods used to evaluate threats and the overall extinction risk to the species. For purposes of the risk assessment, an ERA team comprised of fishery biologists and shark experts was convened to review the best available information on the species and evaluate the overall risk of extinction facing the common thresher shark now and in the foreseeable future. The term "foreseeable future" was defined as the timeframe over which threats could be reliably predicted to impact the biological status of the species. After considering the life history of the common thresher shark, availability of data, and type of threats, the ERA team decided that the foreseeable future should be defined as approximately 3 generation times for the common thresher shark, or 30 years. A generation time is defined as the time it takes, on average, for a sexually mature female common thresher shark to be replaced by offspring with the same spawning capacity. This timeframe (3 generation times) takes into account the time necessary to provide for the conservation and recovery of the species. As a late-maturing species, with slow growth rate and relatively low productivity, it would likely take more than a generation time for any conservative management action to be realized and reflected in population abundance indices. This is supported by the fact that we have a well-documented example of how this species responds to intense fishing pressure, and the time required for the initial implementation of regulatory measures to be reflected in population abundance indices. For the northeastern Pacific stock of common thresher, the time period from being in an overfished state (*i.e.*, lowest point was approximately 30% of virgin reproductive output in 1995) to almost fully recovered after the implementation of management measures in 1985 was approximately 20–30 years (which comports with 3 generation times of the species).

In addition, the foreseeable future timeframe is also a function of the reliability of available data regarding the identified threats and extends only as far as the data allow for making reasonable predictions about the species' response to those threats. Since the main threats to the species were identified as fisheries and the inadequacy of existing regulatory measures that manage these fisheries, the ERA team felt that they had the background knowledge in fisheries management and expertise to confidently predict the impact of these threats on the biological status of the species within this timeframe.

Often the ability to measure or document risk factors is limited, and information is not quantitative or is lacking altogether. Therefore, in assessing risk, it is important to include both qualitative and quantitative information. In assessing extinction risk to the species, the ERA team considered the demographic viability factors developed by McElhany *et al.* (2000) and the risk matrix approach developed by Wainwright and Kope (1999) to organize and summarize extinction risk considerations. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews (see *http://www.nmfs.noaa.gov/pr/species* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four demographic viability factors: abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viability factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Using these concepts, the ERA team evaluated demographic risks by assigning a risk score to each of the four demographic risk factors. The scoring for these demographic risk criteria correspond to the following values: 0—unknown risk, 1—low risk, 2—moderate risk, and 3—high risk. Detailed definitions of the risk scores can be found in the status review report. The ERA team also performed a threats assessment for the common thresher shark by evaluating the effect that the threat was currently having on the extinction risk of the species. The levels included "low effect," "moderate effect" and "high effect." The scores were then tallied and summarized for each threat. It should be emphasized that this exercise was simply a tool to help the ERA team members organize the information and assist in their thought processes for determining the overall risk of extinction for the common thresher shark.

Guided by the results from the demographic risk analysis and the threats assessment, the ERA team members were asked to use their informed professional judgment to make an overall extinction risk determination for the common thresher shark. For this analysis, the ERA team defined three levels of extinction risk: 1—low risk, 2—moderate risk, and 3—high risk, which are all temporally connected. Detailed definitions of these risk levels are as follows: 1 = Low risk: A species may be at a low risk of extinction if it exhibits a trajectory indicating that it is not currently experiencing a moderate risk of extinction now, nor is it likely to have a high risk of extinction in the foreseeable future (see definitions of "Moderate Risk" and "High Risk" below). More specifically, a species may be at low risk of extinction due to projected threats and its likely response to those threats (*i.e.*, stable or increasing trends in abundance/population growth, spatial structure and connectivity, and/or diversity and resilience); 2 = Moderate risk: A species is at moderate risk of extinction if it exhibits a trajectory indicating that it is likely to be at a high risk of extinction in the foreseeable future (see description of "High Risk" below). More specifically, a species may be at moderate risk of extinction due to projected threats and its likely response to those threats (*i.e.*, declining trends in abundance/population growth, spatial structure and connectivity, and/or diversity and resilience); 3 = High risk: A species is at high risk of extinction when it is currently at or near a level of abundance, spatial structure and connectivity, and/or diversity and resilience that place its persistence in question. Demographic risk may be strongly influenced by stochastic or depensatory processes. Similarly, a species may be at high risk of extinction if it faces clear and present threats (*e.g.*, confinement to a small geographic area; imminent destruction, modification, or curtailment of its habitat; or disease epidemic) that are likely to create such imminent demographic risks. The ERA team adopted the "likelihood point" (FEMAT) method for ranking the overall risk of extinction to allow individuals to express uncertainty. For this approach, each team member distributed 10 "likelihood points" among the extinction risk levels. This approach has been used in previous NMFS status reviews (*e.g.*, Pacific salmon, Southern Resident killer whale, Puget Sound rockfish, Pacific herring, and black abalone) to structure the team's thinking and express levels of uncertainty when assigning risk categories. Although this process helps to integrate and summarize a large amount of diverse information, there is no simple way to translate the risk matrix scores directly into a determination of overall extinction risk. Other descriptive statistics, such as mean, variance, and standard deviation, were not calculated, as the ERA team felt these metrics would add artificial precision or accuracy to the results. The scores were then tallied and summarized.

Finally, the ERA team did not make recommendations as to whether the species should be listed as threatened or endangered. Rather, the ERA team drew scientific conclusions about the overall risk of extinction faced by the common thresher shark under present conditions and in the foreseeable future based on an evaluation of the species' demographic risks and assessment of threats.

Evaluation of Demographic Risks

Abundance

There is currently a lack of reliable estimates of global population size for the common thresher shark, with most of the available information indicating that the species is naturally rare in a large portion of its range. The ERA team expressed some concern regarding the common thresher shark's global abundance, particularly given that the species likely experienced localized population declines over the past few decades. Given the lack of data, and the fact that most of these assessments are not specific to common thresher, the extent of the decline and current status of the global population are unclear. However, some information, including a recent stock assessment and a species-specific analysis of observer data provide some insight into current abundance levels of the species.

In the eastern North Pacific, the NMFS SWFSC conducted the only species-specific stock assessment of the common thresher shark to date, which incorporates data from the United States and Mexico for the period 1969–2014. The U.S. fisheries included the swordfish/shark drift gillnet, recreational, nearshore setnet and small-mesh drift gillnet, and miscellaneous fisheries. The Mexican fisheries included the swordfish/shark drift gillnet, pelagic longline, and artisanal (panga) fisheries. This assessment incorporated fisheries-dependent data (including estimated removals, size compositions, indices of relative abundance, and conditional age-at-length) as well as fisheries-independent data (*e.g.*, size compositions and a relative abundance index for juvenile common thresher sharks). The results of this stock assessment indicate that the common thresher shark stock along the West Coast of North America (including Mexico and Canada) experienced a large decline (>70 percent) in spawning output with the advent of the drift gillnet fishery in the late 1970s; however, the decline was arrested in the mid-1980s with a series of regulations restricting the fishery and the stock has recovered gradually over time. In fact, the spawning output in 2014 was estimated to be 94.4 percent of its unexploited level. Therefore, the stock is not likely in an overfished condition or experiencing overfishing at this time (Teo *et al.*, in prep). The ERA team accepted the results of this stock assessment and concluded that common thresher shark abundance is likely increasing in this portion of its range.

In the Northwest Atlantic, several studies have been conducted to determine trends in abundance of various shark species, including the common thresher shark. In the Northwest Atlantic longline fisheries, thresher sharks (both common and bigeye threshers) are typically recorded at the genus level by observers as well as in logbooks, with the bigeye thresher shark typically dominant in the catches. Baum *et al.* (2003) analyzed logbook data for the U.S. pelagic longline fleets targeting swordfish and tunas, and reported an 80 percent decline in relative abundance for thresher sharks (common and bigeye threshers combined) from 1986 to 2000. However, these results were challenged (see discussions in Burgess *et al.* 2005a and Burgess *et al.* 2005b) on the basis of whether correct inferences were made regarding the magnitude of shark population declines in the Atlantic. In a more recent re-analysis of the same logbook dataset using a similar methodology, Cortés *et al.* (2007) reported an overall 63 percent decline from 1986–2005, and a 50 percent decline from 1992–2005. In contrast, the analysis of the observer dataset from the same fishery resulted in an opposite trend to that of the logbook analysis, with a 28 percent increase in abundance for the same period of 1992–2005 (Cortés *et al.*, 2010). Baum and

Blanchard (2010) also analyzed observer data from 1992–2005 and reported no change in the population trend over the time period, concluding that individual year estimates for thresher sharks suggest that the population potentially stabilized. It should be noted that while the sample size in the latter observer analysis was very small (n = 14–84) compared to that in the logbook analysis (n = 112–1292) (Kyne *et al.*, 2012), observer data are generally regarded as more reliable than logbook data for non-target shark species (Walsh *et al.*, 2002). As such, and using a similar approach as Cortés *et al.* (2007), the ERA team analyzed the most recent species-specific observer data for the common thresher shark from 1992–2013, and found no obvious change in the population trend over time, indicating that the population in the Northwest Atlantic Ocean has stabilized.

In other areas of the common thresher shark range, species-specific abundance data are absent, rare, or presented as a thresher complex. In the Northeast Atlantic and Mediterranean, only one study provided a time-series analysis of fishery data specific to common thresher sharks (Ferretti *et al.*, 2008). The study, which compiled 9 time series of abundance indices from commercial and recreational fishery landings, scientific surveys, and sighting records, used generalized linear models to extract instantaneous rates of change from each data set, and conducted a meta-analysis to compare population trends. Results of this study indicate that common thresher abundance in this area decreased by 96–99 percent over the last two centuries. Most of the other scientific information that we and the ERA team reviewed presented data on other species of threshers or a thresher complex (see Young *et al.*, 2015). For example, one study compared estimates of body mass and indices of abundance and biomass derived from data collected in recent years by observers on commercial longliners in the tropical Pacific with those from a scientific survey conducted in the same general region in the early 1950s (Ward and Myers, 2005). This study estimated a decline in combined thresher abundance (all three *Alopias* spp.) of 83 percent, with a decline in biomass to approximately 5 percent of virgin levels and significant reductions in mean body mass. Mean body mass (kg) also declined by nearly 30 percent (from 17 kg to 12 kg). However, in addition to the fact that this study does not present data for any particular thresher species, the ERA team identified several caveats of this study, including variation in locations between surveys and differences in data sources (*e.g.*, fishery-independent data vs. fishery-dependent data), and seriously questioned the conclusions regarding the magnitude of thresher abundance decline. Further, to use a thresher complex or other thresher species as a proxy for common thresher abundance is erroneous because of the differences in their distributions and life history, as well as the proportions they make up in commercial catches. When identified to species level, common thresher sharks do not appear to be a significant part of the direct or incidental shark catch throughout most of their range (*e.g.*, Western and Central Pacific Ocean, Indian Ocean, South Atlantic). In fact, some evidence suggests that this species may be naturally rare in fisheries throughout the tropical Western and Central Pacific and Indian Oceans due to its more coastal and temperate distribution. This is evidenced by the species' rarity in fisheries data as well as information (albeit limited) from genetic studies of shark fins throughout these regions. As such, the common thresher's predominantly coastal and temperate distribution may buffer the species from exposure to high levels of industrial high-seas fishing pressure in a large portion of its range that could reduce its abundance. Finally, in most areas showing overall declines in Alopiids, the declines are not attributed to common threshers, with the exception of the Mediterranean.

Based on the very limited abundance information available, from both fishery-independent and -dependent surveys, and its general rarity in fisheries catch in a large portion of its range, the ERA team concluded that the common thresher shark has likely declined from historical numbers as a result of fishing mortality; however, based on the best available information, current common thresher abundance is either stable, recovered, or shows no clear trend for most areas. While the level of decline in the Mediterranean is concerning, the ERA team concluded, and we agree, that the Mediterranean represents a small portion of the common thresher shark's global range and likely does not affect the global population, particularly given the lack of evidence for trans-Atlantic migrations from the Mediterranean to other portions of the species' range. Therefore, we conclude that there is no evidence to suggest that the species is at a high risk of extinction throughout its range, now or in the foreseeable future, due to environmental variation, anthropogenic perturbations, or depensatory processes based on its current abundance levels.

Growth Rate/Productivity

Similar to abundance, the ERA team expressed some concern regarding the effect of the common thresher shark's growth rate and productivity on its risk of extinction. Sharks, in general, have lower reproductive and growth rates compared to bony fishes; however, common thresher sharks exhibit life-history traits and population parameters that are intermediary among other shark species. As previously noted, common thresher shark productivity, determined as intrinsic rate of population increase (*r*), has been estimated at 0.121 per year (Cortés *et al.*, 2012). The species' demographic parameters place it towards the moderate to faster growing sharks along a "fast-slow" continuum of population parameters that have been calculated for 38 species of sharks by Cortés (2002, Appendix 2). In fact, a number of studies have shown common thresher sharks to be among the most productive species of sharks. For example, a recent study found that common thresher sharks ranked among the highest in productivity when compared with other pelagic shark species (ranking 9 out of 26 overall) in terms of its egg production, rebound potential, potential for population increase, and stochastic growth rate (Chapple and Botsford, 2013). However, primarily based on the fact that most species of elasmobranchs require many years to mature, and have relatively low fecundity compared to teleosts (bony fishes), these life history characteristics could pose a risk to this species in combination with threats that reduce its abundance.

Spatial Structure/Connectivity

The ERA team did not identify habitat structure or connectivity as a potential risk to the common thresher shark. Habitat characteristics that are important to the common thresher shark are largely unknown, as are nursery areas. The common thresher is a relatively widespread species, with multiple stocks in the Pacific, Indian, and Atlantic oceans. The population exchange between these stocks is unknown but probably low, so loss of a single stock would not constitute a risk to the entire species. Additionally, there is currently no evidence of female philopatry, the species is highly mobile, and there is little known about specific migration routes. It is also unknown if there are source-sink dynamics at work that may affect population growth or species' decline. Finally, there is no information on critical source populations to suggest spatial structure and/or loss of connectivity are presently posing demographic risks to the species. Thus, based on the best available information, the ERA team concluded, and we agree, that there is insufficient information to support the conclusion that spatial structure and connectivity pose significant risks to this species' continued existence.

Diversity

The ERA team concluded that the current level of information regarding the common thresher's diversity is either unavailable or unknown, such that the contribution of this factor to the extinction risk of the species cannot be determined at this time. There is no evidence that the species is at risk due to a substantial change or loss of variation in genetic characteristics or gene flow among populations. This species is found in a broad range of habitats and appears to be well-adapted and opportunistic. Additionally, there are no restrictions to the species' ability to disperse and contribute to gene flow throughout its range, nor is there evidence of a substantial change or loss of variation in life-history traits, population demography, morphology, behavior, or genetic characteristics. Based on this information, the ERA team concluded, and we agree, that there is insufficient information to support the conclusion that diversity poses significant risks to this species' continued existence.

Summary of Factors Affecting the Common Thresher Shark

As described above, section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR 424.11(c)) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. The ERA team evaluated whether and the extent to which each of the foregoing factors contributed to the overall extinction risk of the global common thresher shark population. This section briefly summarizes the ERA team's findings and our conclusions regarding threats to the common thresher shark. More details can be found in the status review report (Young *et al.*, 2015).

The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The ERA team did not identify habitat destruction as a potential threat to the common thresher shark. As described earlier (see *Species Description—Habitat Use and Movement* section), the common thresher shark is found worldwide, and resides in coastal temperate and tropical seas, with a noted tolerance for colder waters. Common thresher sharks are both coastal, ranging over continental and insular shelves, and epipelagic, ranging far from land, though they are most abundant near land approximately 40–50 nautical miles (nmi; 74–93 km) from shore (Strasburg, 1958; Bedford, 1992). However, little else is known regarding specific habitat preferences or characteristics.

In the U.S. exclusive economic zone (EEZ), the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*) requires NMFS to identify and describe essential fish habitat (EFH) in fishery management plans (FMPs), minimize the adverse effects of fishing on EFH, and identify actions to encourage the conservation and enhancement of EFH. To that end, NMFS has funded two cooperative survey programs intended to help delineate shark nursery habitats in the Atlantic and Gulf of Mexico. The Cooperative Atlantic States Shark Pupping and Nursery Survey and the Cooperative Gulf of Mexico States Shark Pupping and Nursery Survey are designed to assess the geographical and seasonal extent of shark nursery habitat, determine which shark species use these areas, and gauge the relative importance of these coastal habitats for use in EFH determinations. For the common thresher, results from the surveys indicate the importance of coastal waters off the East Coast of the Atlantic, from Maine to the Florida Keys, areas scattered in the Gulf of Mexico from the southern coast of Florida to Texas, and areas south and southwest of Puerto Rico (NMFS, 2009). As a side note, insufficient data are available to differentiate EFH by size classes in the Atlantic; therefore, EFH is the same for all life stages. Since common thresher shark EFH is defined as the water column or attributes of the water column, NMFS determined that there are minimal or no cumulative anticipated impacts to the EFH from gear used in U.S. Highly Migratory Species (HMS) and non-HMS fisheries, basing its finding on an examination of published literature and anecdotal evidence (NMFS, 2006).

On the U.S. West Coast, common thresher pups are found in near-shore waters of the Southern California Bight. Essential fish habitat is described for three age classes in this area: Neonate/early juveniles, late juveniles/subadults, and adults. For neonate/early juveniles (<102 cm FL), EFH includes epipelagic, neritic and oceanic waters off beaches, in shallow bays, in near surface waters from the U.S.-Mexico EEZ border north to off Santa Cruz, over bottom depths of 6 to 400 fathoms (fm; 11–732 m), particularly in water less than 100 fm (183 m) deep and to a lesser extent farther offshore between 200–300 fm (366–549 m). For late juveniles/subadults (>101 cm FL and <167 cm FL), EFH is described as epipelagic, neritic and oceanic waters off beaches and open coast bays and offshore, in near-surface waters from the U.S.-Mexico EEZ border north to off Pigeon Point, California, from the 6 to 1,400 fm (11–2,560 m) isobaths. For adults (>166 cm FL), EFH is described as epipelagic, neritic and oceanic waters off beaches and open coast bays, in near surface waters from the U.S.-Mexico EEZ border north seasonally to Cape Flattery, WA, from the 40 fm (73 m) isobath westward to approximately north of the Mendocino Escarpment and from the 40 to 1,900 fm (73–3,474 m) isobaths south of the Mendocino Escarpment. In the U.S. Western Pacific, including Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, EFH for common thresher sharks is broadly defined as the water column down to a depth of 1,000 m (547 fm) from the shoreline to the outer limit of the EEZ (WPFMC, 2009).

Common thresher shark habitat in other parts of its range is assumed to be similar to that in the Northwest Atlantic and Gulf of Mexico, comprised of open ocean environments occurring over broad geographic ranges and characterized primarily by the water column attributes. As such, large-scale impacts, such as global climate change, that affect ocean temperatures, currents, and potentially food chain dynamics, may pose a threat to this species. Studies on the impacts of climate change specific to thresher sharks have not been conducted; however, there are a couple of studies on other pelagic shark species that occur in the range of the common thresher shark. For example, Chin *et al.* (2010) conducted an integrated risk assessment for climate change to assess the vulnerability of pelagic sharks, as well as a number of other chondrichthyan species, to climate change on the Great Barrier Reef (GBR). The assessment examined individual species but also lumped species together in ecological groups (such as freshwater and estuarine, coastal and inshore, reef, shelf, etc.) to determine which groups may be most vulnerable to climate change. The assessment took into account the *in situ* changes and effects that are predicted to occur over the next 100 years in the GBR and assessed each species' exposure, sensitivity, and adaptive capacity to a number of climate change factors including: water and air temperature, ocean acidification, freshwater input, ocean circulation, sea level rise, severe weather, light, and ultraviolet radiation. Of the 133 GBR shark and ray species, the assessment identified 30 as being moderately or highly vulnerable to climate change. The pelagic shark species included in the assessment, however, were not among these species. In fact, the pelagic shark group was ranked as having a low overall vulnerability to climate change, with low vulnerability to each of the assessed climate change factors. In another study on potential effects of climate change to sharks, Hazen *et al.* (2012) used data derived from an electronic tagging project (Tagging of Pacific Predators Project) and output from a climate change model to predict habitat and diversity shifts in top marine predators in the Pacific out to the year 2100. Results of the study showed significant differences in habitat change among species groups, which resulted in species-specific "winners" and "losers." The shark guild as a whole had the greatest risk of pelagic habitat loss. However, the model predictions in Hazen *et al.* (2012) and the vulnerability assessment in Chin *et al.* (2010) represent only two very broad analyses of how climate change may affect pelagic sharks, and do not account for factors such as species interactions, food web dynamics, and fine-scale habitat use patterns that need to be considered to more comprehensively assess the effects of climate change on the pelagic ecosystem. Further, results of these studies are not specific to thresher sharks, and finally, the complexity of ecosystem processes and interactions complicate the interpretation of modeled climate change predictions and the potential impacts on populations. Thus, the potential effects of climate change on common thresher sharks and their habitat are highly uncertain.

Overall, the common thresher shark is highly mobile throughout its range, and although very little information is known on habitat use or pupping and nursery areas, there is no evidence to suggest its access to suitable habitat is restricted. The ERA team noted that common threshers are not reliant on estuarine habitats, which are thought to be one of the most vulnerable habitat types to climate change. Additionally, common threshers are likely more confined by temperature and prey distributions than a particular habitat type. The highly migratory nature of the common thresher shark gives it the ability to shift its range or distribution to remain in an environment conducive to its physiological and ecological needs. Therefore, while effects from climate change have the potential to pose a threat to sharks in general, including habitat changes (*e.g.,* changes in currents and ocean circulation) and potential impacts to prey species, species-specific impacts to common threshers and their habitat are currently unknown, but likely minimal. Overall, it is very unlikely that the loss or degradation of any particular habitat type would have a substantial effect on the common thresher population. Thus, based on the best available information, we conclude that current evidence does not indicate that there exists a present or threatened destruction, modification, or curtailment of the common thresher shark's habitat or range.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The common thresher shark is considered desirable for human consumption and a highly prized game fish; thus, it is a valuable bycatch and target species, which increases its susceptibility to being overfished. The ERA team assessed three different factors that may contribute to the overutilization of the common thresher shark: Bycatch in commercial fisheries (including at-vessel and post-release mortality rates), targeting in recreational fisheries, and the global shark trade (including the trade of both common thresher fins and meat). Common thresher sharks are caught as bycatch in many global fisheries, including bottom and pelagic longline fisheries, purse seine fisheries, coastal gillnet fisheries, and artisanal fisheries. As a primarily coastal and temperate species, the common thresher shark is relatively rare in catches of tropical fisheries, particularly in the Western and Central Pacific and Indian Oceans. They are also rare in catches of fisheries operating in the South Atlantic. Though it is generally not a target species in commercial fisheries, it is valued for both its meat and fins, and is therefore valued as incidental catch for the international shark trade (Clarke *et al.*, 2006a; Dent and Clarke, 2015).

As noted previously in the *Evaluation of Demographic Risks—Abundance* section, there is very little information on the historical abundance, catch, and trends of common thresher sharks, with the exception of U.S. data from the Northeast Pacific and Northwest Atlantic. The species is only occasionally mentioned in fisheries records from the Western and Central Pacific and Indian Oceans, and is considered rare in fisheries of the South Atlantic. Although more countries and regional fisheries management organizations (RFMOs) are working towards better reporting of fish catches down to species level, catches of common threshers have gone and continue to go unrecorded in many countries. Additionally, many catch records that do include thresher sharks do not differentiate between the *Alopias* species or shark species in general, and if they do, they are often plagued by species misidentifications. These numbers are also likely under-reported in catch records, as many records do not account for discards (*e.g.,* where the fins are kept but the carcass is discarded) or reflect dressed weights instead of live weights. Thus, the lack of catch data for common thresher sharks makes it difficult to estimate rates of fishing mortality or conduct detailed quantitative analyses of the effects of fishing on common thresher populations.

In the eastern North Pacific, common thresher sharks were historically targeted and caught in the California drift gillnet swordfish/pelagic shark fishery beginning in the late 1970s. The California fishery for common threshers peaked in 1982 with estimated landings of approximately 1,800 mt, and then sharply declined in 1986, when all subadults were virtually eliminated from the population due to overfishing (Camhi *et al.*, 2009; Goldman, 2009). As a result, the common thresher population experienced a significant historical decline, with approximately 77 percent of the spawning potential relative to the unfished stock removed by fishing during that period. Catch-per-unit-effort (CPUE) also declined during this time period. By 1990, the fishery shifted to a swordfish fishery primarily due to economic drivers, but also to protect pupping female thresher sharks (PFMC, 2003), with a series of regulations restricting the time-areas allowed for fishing, gear configurations, and bycatch limitations. Commercial landings from the U.S. West Coast swordfish/shark drift gillnet fishery declined from 1,800 mt in the early 1980s to approximately 10 mt by 18 vessels in 2014. From 2004–2014, annual U.S. commercial landings averaged around 115 mt (PFMC, 2015), which is below the current established sustainable and precautionary harvest level of 340 mt and well below the current maximum sustainable yield (MSY) of the species (*i.e.*, 806 mt).

Overall, the California drift gill net fishery serves as a well-documented case of marked population depletion of a small, localized stock of common thresher shark over a short time period (less than a decade) followed by a gradual recovery after the implementation of regulatory measures. Based on the recent stock assessment results of Teo *et al.* (in prep), the common thresher stock along the West Coast of North America is not considered overfished and overfishing is not occurring. In fact, the eastern North Pacific stock of common thresher has recovered to approximately 94 percent of its pre-fished levels.

In other areas of the Eastern Pacific, the level of utilization of common thresher is unclear. Common threshers are taken in artisanal, pelagic longline and gillnet fisheries targeting pelagic sharks off Mexico's Pacific Coast (Sosa-Nishizaki *et al.*, 2008); however, the recent stock assessment for the eastern North Pacific stock of common thresher (described above) includes removals from these Mexican fisheries, and deemed these removal levels as sustainable (Teo *et al.*, in prep). Farther south, the common thresher shark is reportedly caught in longline and gillnet fisheries in Peru and has been reported as the sixth most important commercial shark species in Peruvian fisheries, representing 6 percent of total shark landings (Romero Camarena and Bustamante Ruiz, 2007; Gonzalez-Pestana *et al.*, 2014). However, it is highly likely that these records were misidentified pelagic thresher sharks, as a recent genetic study focused on landings of the small-scale Peruvian shark fishery discovered a long-term misidentification between common and pelagic thresher sharks at landing points (Velez-Zuazo *et al.*, 2015). Although the common thresher is the only species listed in official Peruvian landing reports, all samples in the aforementioned study labeled as thresher shark corresponded to pelagic thresher shark (n = 12), indicating that landing reports in Peru may be pooled for all *Alopias* species, (Velez-Zuazo *et al.*, 2015) with the majority possibly comprised of pelagic threshers. Reports of common thresher shark landings are uncommon in Costa Rica and Ecuador. According to observer data recorded on Costa Rican longline vessels, a total of only 23 common thresher sharks were caught from 1999–2010 (Dapp *et al.*, 2013). Additionally, while both pelagic and bigeye thresher sharks are listed as commonly caught species in Ecuadorian waters, the common thresher is not listed, and pelagic threshers are the dominant thresher species in thresher shark landings (Jacquet *et al.*, 2008; Reardon *et al.*, 2009; Martinez-Ortiz *et al.*, 2015). Thus, the common thresher shark is seemingly rare in tropical fisheries of the Eastern Pacific, likely due to its more temperate distribution.

In the Western and Central Pacific Ocean, all three thresher shark species interact with longline fisheries, with recent catch estimates from 1992–2009 indicating that the genus *Alopias* comprises approximately 3 percent of the total shark catch (Clarke, 2014). However, most of the available fisheries data from the Western and Central Pacific are for the thresher complex (all three *Alopias* spp.). While records of bigeye and pelagic threshers are recorded in the catches of fisheries operating in this region, albeit very under-reported, very little information is available on catches of common thresher shark. Both historical observations and the best available current information indicate that common threshers are relatively rare in this region, as they are not frequently encountered in tropical fisheries due to their distribution in more coastal and temperate waters. This is evidenced by the lack of catch and genetic records of common thresher sharks in areas of high fishing effort, which is seemingly concentrated in more tropical waters. For example, in the Republic of the Marshall Islands (RMI), while both pelagic and bigeye threshers are two of only five species that comprise 80 percent of the total annual shark catch, the common thresher is observed in substantially lower numbers; only 87 common threshers were taken in RMI longline fisheries from 2005–2009, compared to 1,636 bigeye thresher sharks, and 1,353 pelagic thresher sharks (Bromhead *et al.*, 2012). Likewise, common thresher occurrence in Hawaiian pelagic longline fisheries in the Central Pacific is considered uncommon, while the bigeye thresher is considered the dominant thresher species encountered. For example, Hawaii observer data from 1995–2006 indicated a low catch of common thresher sharks (only 7 individuals identified as *A. vulpinus* and 1,246 individuals for the combined category of *A. vulpinus*/*A. pelagicus* on 26,507 sets total (4.7 percent of total sets), both fishery sectors combined) (Young *et al.*, 2015).

Further, in several analyses of fisheries data from the Western and Central Pacific (based on data holdings of the Secretariat of the Pacific Community (SPC)) common thresher sharks were characterized as "rare" or "not frequently encountered" with the exception of the more temperate waters of Australia and New Zealand. For example, in analyses of Japanese longline data, where thresher sharks comprise approximately 3.44 percent of the total shark catch, the bigeye thresher was the dominant thresher species encountered. In order to determine the stock status of key shark species in the Western and Central Pacific Ocean (including thresher sharks) Clarke *et al.* (2011) conducted an indicator analysis by examining data holdings from the Secretariat of the Pacific Community-Oceanic Fisheries Programme (SPC–OFP) for sharks taken in longline and purse seine fisheries. In summary, the indicator analysis showed that the three thresher species have divergent, but not necessarily distinct, distributions and interact with longline fisheries throughout the Western and Central Pacific Ocean. Threshers comprise a notable portion of the longline catch only in one particular region of the Central Pacific (just south of Hawaii), and mainly in deep sets. While catch rate analysis produced no clear trends for the group as a whole, decreasing size trends were identified in tropical regions; however, the authors determined that these trends were most likely reflective of trends in bigeye thresher rather than common or pelagic threshers. Finally, the most recent analysis to date of standardized longline CPUE data shows a decline for the thresher shark complex in recent years in the region (Rice *et al.*, 2015), and when combined with decreasing size trends, likely indicates some level of population decline of the thresher complex in this area. However, based on catch data and the differing distributions between the thresher species, the ERA team concluded, and we agree, that it is more likely these trends largely reflect those of bigeye thresher rather than the common thresher.

As mentioned previously, common thresher sharks are more prevalent in temperate waters, and are more commonly encountered in Australian and New Zealand fisheries. Common thresher sharks are caught in a number of fisheries operating off the eastern and western coasts of Australia, including the Eastern Tuna and Billfish Fishery (ETBF), Southern and Eastern Scale Fish and Shark Fishery (SESSF) and the Western Tuna and Billfish Fishery (WTBF). A number of risk assessments have been conducted for these fisheries, in which the common thresher received various scores based on its productivity, susceptibility, and encounterability. However, although these risk assessments are informative, without any corresponding catch and effort data, it is difficult to discern what the status of the common thresher shark is in Australian waters. In New Zealand, the common thresher is reported as bycatch in New Zealand's surface longline fishery. According to observer data, an estimated 1,304 thresher sharks were caught as bycatch in the New Zealand longline fishery from 2006–2009. In 2009, only 37.5 percent of threshers were retained, with the remaining 62.5 percent released alive. Additionally, a large reduction in longline effort has occurred since 2004. We could not find any additional information regarding temporal abundance trends in this fishery, but according to the New Zealand Fisheries Department, bycatch numbers are considered stable at this time (New Zealand Ministry of Fisheries, 2015).

In the Northwest Atlantic, common threshers are taken predominantly in the U.S. pelagic longline (PLL) fishery. Based on the best available data, the common thresher population size has likely declined in this region due to historical exploitation of the species (see *Abundance* section; Baum *et al.* (2003), Cortés (2007)). However, as previously described, these data are largely based on fisheries logbooks and are not species-specific, with the bigeye thresher representing the majority of the catch. Since 2006 (the last year of the fisheries data from the Baum *et al.* (2003) and Cortés (2007) papers), the trend is unclear, with some evidence that the population has actually stabilized (Baum and Blanchard, 2010). In order to discern abundance trends specific to the common thresher, the ERA team conducted a species-specific analysis using standardized abundance indices derived from U.S. PLL fishery observer data. Results of this analysis show that the common thresher shark population in this region has likely stabilized since 1990. Reported landings for common thresher in the Northwest Atlantic have also remained stable in recent years at approximately 21 mt. This indicates that current levels of catch and bycatch and associated mortality may be sustainable in this portion of the species' range. There is still uncertainty and the problem could get worse if longline fishing effort were to increase; however, the stabilization of thresher shark populations in the 1990s coincided with the first Federal Fishery Management Plan for Sharks in the Northwest Atlantic Ocean and Gulf of Mexico, which includes regulations on trip limits and quotas (see *Factor D—Inadequacy of Existing Regulatory Mechanisms* for more details). Therefore, under current management measures, the ERA team concluded that overutilization is not currently occurring in this portion of the common thresher's range to the point that it significantly contributes to the species' global risk of extinction, now or in the foreseeable future.

In the Northeast Atlantic and Mediterranean, fisheries data for thresher shark landings are scarce and unreliable because they are reported irregularly and variably, and it is likely that the two thresher species (*A. vulpinus* and *A. superciliosus*) are mixed in the records (ICES, 2014). Though both adult and juvenile common threshers have been reported as bycatch in all fishing gears used in the Mediterranean basin, including longline, purse seine, trawl, driftnet, trammel net, gillnet, fish traps, and mid-water fisheries, they are caught mainly in longline fisheries for tunas and swordfish. The main landing nations of thresher sharks in the Northeast Atlantic and Mediterranean are Portugal, Spain and France. As discussed earlier in the *Demographic Assessment—Abundance* section, only one study is available to suggest that common thresher sharks have declined between an estimated 96 and 99 percent in abundance and biomass in the Mediterranean Sea over the past two centuries (Ferretti *et al.*, 2008). Data from this region suggest that both annual catches and mean weights of common thresher shark have fallen significantly as a result of fishing mortality. For example, a significant population reduction has been observed in Tunisian waters, with small-scale fisheries now targeting neonates. Recent investigations also show common thresher sharks are being increasingly targeted in the Alboran Sea by the illegal large-scale swordfish driftnet fleet based primarily in Morocco. Of concern is the fact that the Alboran Sea has been identified as a potential nursery area for common threshers, as aggregations of gravid females have been observed in this area (Moreno and Moron, 1992; Tudela *et al.*, 2005). The intensive fishing pressure and potential targeting of common thresher sharks by the swordfish driftnet fleet in the Alboran Sea has the potential to significantly impact the local population of common threshers in the area, as well as affect recruitment into the local population. However, landings of thresher shark reported to International Commission for the Conservation of Atlantic Tunas (ICCAT) by the European Union (EU) have declined significantly in recent years, which may be the result of recent regulations enacted by Spain, a top thresher catching country, that prohibit the retention and sale of all thresher species (including the common thresher shark). As previously mentioned, although the level of utilization and potential population decline of common thresher shark in the Mediterranean is concerning, the ERA team concluded, and we agree, that the Mediterranean is a small portion of the common thresher shark's global range and likely does not affect the global population. In fact, despite the reported declines, the common thresher is still considered one of the most common bycatch species in some fisheries operating in this region.

In the Southwest Atlantic, there is little information on the catch rates or trends of thresher sharks. Some countries still fail to collect shark data while others collect it but fail to report (Frédou *et al.*, 2015). Thresher sharks are taken as bycatch in various fisheries, including Cuban, Brazilian, Uruguayan, Taiwanese, Japanese, Venezuelan, and Portuguese longline fisheries. However, based on the best available information, catches of common thresher sharks are relatively rare in the South Atlantic. For example, from 1994–2000, the common thresher shark represented only 1.6 percent of the total shark catch in the Venezuelan pelagic longline fishery. Likewise, although the common thresher has been reported in catches of Brazilian Santos longline fishery, the species is characterized as "occasional," with almost 100 percent of thresher catch in Brazil represented by the bigeye thresher. In Uruguayan longline fisheries, common thresher CPUE was low from 2001–2005 (ranging from 0.13 in 2002 to 0.004 in 2005); however, these low CPUE values were directly related to the spatial distribution of effort in areas where the occurrence of common thresher is naturally lower (Berrondo *et al.*, 2007). Additionally, no real trend could be discerned from this dataset. As such, the ERA team concluded, and we agree, that the common thresher is likely naturally rare in this portion of its range given its more temperate distribution and rarity in catches of longline fisheries operations in this region. Thus, we conclude that overutilization as a result of fishing mortality is not likely occurring in the Southwest Atlantic such that it places the species at an increased risk of extinction throughout its global range, now or in the foreseeable future.

In an effort to evaluate the vulnerability of specific shark stocks to pelagic longline fisheries in the Atlantic Ocean, Cortés *et al.* (2012) conducted an Ecological Risk Assessment using observer information collected from a number of fleets operating under ICCAT (which is the RFMO responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas). Ecological Risk Assessments are popular modeling tools that take into account a stock's biological productivity (evaluated based on life history characteristics) and susceptibility to a fishery (evaluated based on availability of the species within the fishery's area of operation, encounterability, post capture mortality and selectivity of the gear) in order to determine its overall vulnerability to overexploitation (Cortés *et al.,* 2012). Ecological Risk Assessment models are useful because they can be conducted on a qualitative, semi-quantitative, or quantitative level, depending on the type of data available for input. Results from the Cortés *et al.* (2012) Ecological Risk Assessment indicate that common thresher sharks face a relatively low risk in ICCAT fisheries. Out of the 20 assessed shark stocks, common thresher sharks ranked 9th in terms of their susceptibility to pelagic longline fisheries in the Atlantic Ocean. The population's estimated productivity value (r = 0.121) ranked 8th; however, this was based on older life history information and recent data suggest common thresher sharks are slightly less productive. Overall vulnerability ranking scores (using three different calculation methods, and ranked on a scale of 1 to 20 where 1 = highest risk) ranged from 9 to 14, indicating that common thresher sharks have moderately low vulnerability and face a relatively low risk to overexploitation by ICCAT pelagic longline fisheries (Cortés *et al.,* 2012).

There are currently no quantitative stock assessments or basic fishery indicators available for common thresher sharks or even thresher sharks in general in the Indian Ocean. Thus, the level of common thresher shark utilization in this region is highly uncertain. Both common and bigeye thresher sharks have been reported as bycatch in Indian Ocean longline and gillnet fisheries, with thresher sharks as a genus comprising an estimated 16 percent of the total shark catch in the Indian Ocean, and having reportedly high hooking mortality (Murua *et al.* 2012; IOTC, 2014). However, results from an Ecological Risk Assessment that examined the impact of longline fisheries of the Indian Ocean on sharks indicate that common thresher sharks face a low risk; in fact, common threshers were ranked as the least vulnerable out of a total of 16 pelagic shark species (based on their relatively high productivity and lower susceptibility scores) (Murua *et al.,* 2012). We could not find any studies on the trends in abundance or catch rates of common threshers in the Indian Ocean, making it difficult to determine the level of exploitation of these species within the ocean basin. In fact, we could only find one study from India that reported CPUE rates over time for sharks in general. In the Andaman and Nicobar region, where catch of common thresher is reportedly most prevalent, total shark CPUE declined sharply (approximately 81 percent) from peak CPUE in years 1992–1993 to years 1996–1997 (John and Varghese, 2009). However, the lack of species-specific CPUE information for common thresher sharks, or even genus-level information for thresher sharks, makes it difficult to evaluate the potential changes in abundance for the species in this region based on John and Varghese (2009) alone. In addition, given that common thresher sharks are more commonly found in temperate waters, and the prevalence of pelagic threshers in the catch of Indonesian fisheries fishing in nearby waters, the reported *A. vulpinus* catch may be misidentified pelagic thresher sharks. Although the Indian Ocean Tuna Commission (IOTC) reports that catches and associated mortality of thresher sharks are high in the Indian Ocean, the available data do not show extensive utilization of common thresher shark by these fisheries relative to other shark species, or even other thresher species. In fact, a recent working paper from the IOTC suggests that common threshers may not even occur in the equatorial and northern tropical Indian Ocean, and previous observations of this species are likely misidentifications (Romanov, 2015). Thus, we conclude that the common thresher's distribution likely buffers it from significant impacts as a result of fishing mortality in this part of its range, where fishing pressure and inadequate regulatory measures may be more problematic. We noted that this threat may also be tempered by the species' relatively low vulnerability to high seas fisheries due to its wide range and relatively high productivity for a pelagic shark species.

In addition to overutilization in commercial fisheries, the ERA team also assessed whether recreational fisheries could be a threat driving overutilization of the common thresher shark. Common thresher sharks are highly prized game fish in recreational fisheries due to their large size and fighting abilities. Information regarding recreational fisheries data for common threshers is severely lacking, with the exception of the United States, where common threshers are popular in both East and West Coast recreational fisheries. In particular, the common thresher shark is the focus of a popular southern California recreational fishery that targets individuals using multiple fishing gears and techniques. Of concern are the high post-release mortality rates reported for common threshers after being foul-hooked in the tail and hauled in backwards. Because the common thresher shark is an obligate ram-ventilator, which means it requires forward motion to ventilate the gills, the reduced ability to extract oxygen from the water during capture, as well as the stress induced from these capture methods, may influence recovery following release. In fact, results from Heberer (2010) revealed that large tail-hooked common thresher sharks with prolonged fight times (≥85 min) experienced 100 percent mortality. However, the recent stock assessment for the eastern North Pacific common thresher population includes removals from this recreational fishery, and shows that the current amount of recreational fishing pressure and associated post-release mortality is sustainable. In the Northwest Atlantic, common thresher sharks have increased in popularity in U.S. shark fishing tournaments in recent years. For example, an estimated 17,834 common thresher sharks were caught in the rod and reel fishery in the U.S. Northwest Atlantic from 2004–2013, with approximately 70 percent retained. In order to glean information on the relative abundance of common thresher sharks in the Northwest Atlantic using recreational fisheries data, the ERA team analyzed data collected by the NMFS Northeast Fisheries Science Center (NEFSC) at five recreational fishing tournaments from 1978 through 2014. These shark tournament data from the Northwest Atlantic (including several tournaments in New York and New Jersey), accounting for changes in effort, show a fairly stable trend in relative abundance through the 1990s followed by an increasing trend through the end of the time series. The ERA team acknowledged that due to the high quality of the meat, the majority of common threshers caught in recreational fisheries are kept, but these numbers are likely minor, especially compared to commercial catches. With most species retained, high post-release mortality rates seen in the southern California recreational fisheries are irrelevant in the Northwest Atlantic. Further, fishing techniques between southern California and the Northwest Atlantic are typically different, resulting in mostly mouth-hooked and higher survivorship of thresher sharks in the Atlantic, compared to mostly tail-hooked thresher sharks and lower survivorship in California (Pers. comm. NMFS Fisheries Statistics Division, 2015).

Finally, the ERA team also assessed whether the shark trade could be a threat driving overutilization of the common thresher shark. Based on Hong Kong fin trade auction data from 1999–2001 and fin weights and genetic information, Clarke *et al.* (2006b) estimated that up to 4 million thresher sharks (all three *Alopias* spp.) (range: 2–4 million), with an equivalent biomass of around 60,000 mt, are traded annually. Thresher sharks as a genus comprised approximately 2.3 percent of the total fins traded annually in the Hong Kong market (Clarke *et al.*, 2006a). The lack of estimates of the global, or even regional, population makes it difficult to put these numbers into perspective. As a result, the effect at this time of the removals (for the shark fin trade) on the ability of the overall population to survive is unknown. While the relative proportion of each thresher shark species comprising the shark fin trade is not available in this genus-level assessment by Clarke *et al.* (2006a), genetic testing conducted in some fish markets provides some (albeit limited) insight into the species-specific prevalence of threshers in the shark fin trade. Genetic sampling was conducted on shark fins collected from several fish markets throughout Indonesia, and revealed that five species (including pelagic and bigeye threshers) represented more than 50 percent of the total fins sampled (n = 582). Pelagic and bigeye threshers collectively represented nearly 15 percent of the total fins sampled; however, the common thresher was not detected in these samples (Sembiring *et al.*, 2015). Likewise, in Taiwan, which has recently surpassed Hong Kong as the world's largest fin-trading center (Dent and Clarke, 2015), common thresher sharks were not identified in 548 genetically tested meat samples from several markets (whereas pelagic and bigeye threshers were both identified as present). In yet another genetic barcoding study of fins from the United Arab Emirates, the fourth largest exporter in the world of raw dried shark fins to Hong Kong, the Alopiidae family represented 5.9 percent of the trade from Dubai (Jabado *et al.*, 2015); however, common threshers were once again not identified in the samples. In fact, we could only find one genetic study of fins, from Chile, in which common threshers were identified as present in very small numbers. Although it is uncertain whether these studies are representative of the entire market within each respective country, results of these genetic tests provide some information (albeit limited) that suggests the common thresher may not be as utilized in the fin trade as other shark species, or even its congeners, *A. pelagicus* and *A. superciliosus.* Additionally, it should be noted that historically, thresher sharks were not identified as "preferred" or "first choice" species for fins, with some traders considering thresher fins to be of low quality and value (Rose, 1996; FAO, 2002; Gilman *et al.*, 2007; Clarke, pers. comm., 2015). Furthermore, recent studies indicate that due to a waning interest in fins as well as increased regulations to curb shark finning, the shark fin market is declining. In fact, the trade in shark fins through China, Hong Kong Special Administrative Region (SAR), which has served as an indicator of the global trade for many years, rose by 10 percent in 2011 but fell by 22 percent in 2012. Additionally, current indications are that the shark fin trade through Hong Kong SAR and China will continue to contract (Dent and Clarke, 2015). In contrast, a surge in the trade of shark meat has occurred in recent years. This could be the result of a number of factors, but taking the shark fin and shark meat aggregate trends together indicate that shark fin supplies are limited by the existing levels of chondrichthyan capture production, but shark meat is underutilized by international markets (Dent and Clarke, 2015). This suggests that historically underutilized chondrichthyan species will be increasingly utilized for their meat. However, because the common thresher shark has historically been fully utilized for both its fins and meat when captured, it is unlikely that this shift in the shark trade would create new or increasing demand for the species. Additionally, thresher sharks in general tend to have relatively low survival rates on longlines (the main gear type catching them) as they are obligate ram ventilators (*i.e.*, they have to swim to survive). As a result, a change in market demand would not necessarily change the species' mortality rates in longline fisheries. Further, in cases where the species is alive upon capture, threshers are considered dangerous to handle onboard because of their large caudal fin. In fact, some fishermen will even cut and release marketable sharks, including threshers, unless they are dead or dying to minimize bodily injury during onboard handling (Gilman *et al.*, 2007; Clarke, 2011). Thus, based on the best available information, the ERA team concluded, and we agree, that the common thresher shark is likely not as prevalent in the shark fin trade relative to other shark species or even other thresher species. Likewise, the shark trade as a whole, including increasing demand for shark meat, is not likely a threat contributing to the overutilization of the species such that it faces a high risk of extinction throughout its global range, now or in the foreseeable future.

Overall, based on the best available information, the ERA team concluded that overutilization is not likely significantly contributing to the common thresher's risk of global extinction, now or in the foreseeable future. However, due to the paucity of available data, the ERA team acknowledged that there are some uncertainties in assessing the contribution of the threat of overutilization to the extinction risk of the common thresher shark. As results from the Cortés *et al.* (2012) and Murua *et al.* (2012) Ecological Risk Assessments demonstrated, the threat of overutilization of common thresher sharks may be tempered by the species' relatively low vulnerability to certain fisheries, a likely condition of their wide range, rare presence on common fishing grounds where fishing pressure is likely most concentrated, and their relatively high productivity. Given the above analysis and best available information, we do not find evidence that overutilization is a threat that is currently placing the species in danger of extinction throughout its global range, now or in the foreseeable future. The severity of the threat of overutilization is dependent upon other risks and threats to the species, such as its abundance (as a demographic risk) as well as its level of protection from fishing mortality throughout its range. However, at this time, there is no evidence to suggest the species is at or near a level of abundance that places its current or future persistence in question due to overutilization.

Disease or Predation

The ERA team did not identify disease or predation as potential threats to the common thresher shark, as they could not find any evidence to suggest that either is presently contributing significantly to the species' risk of extinction. Common thresher sharks likely carry a range of parasites, including copepods and cestodes (Love and Moser, 1983). Specifically, nine species of copepods, genus *Nemesis*, parasitize thresher sharks. These parasites attach themselves to gill filaments and can cause tissue damage, which can then impair respiration in the segments of the gills (Benz and Adamson, 1999); however, there are no existing data to suggest these parasites are affecting common thresher shark abundance levels.

Predation is also not thought to be a factor influencing common thresher numbers. The most significant predator on thresher sharks is likely humans; however, a study from New Zealand documented predation of *A. vulpinus* by killer whales (Visser, 2005). In a 12-year period that documented 108 encounters with New Zealand killer whales, only three individuals of *A. vulpinus* were taken; thus, predation on *A. vulpinus* by killer whales is likely opportunistic and not a contributing factor to abundance levels of common threshers. It is likely that juvenile common thresher sharks experience predation by adult sharks; as a result, juveniles spend approximately the first 3 years of life in nursery areas until they attain a large enough size to avoid predation. The rate of juvenile predation and the subsequent impact on the status of common thresher sharks is unknown; however, because thresher sharks are born alive, and are already about 150 cm TL at birth, predation upon juvenile threshers is likely to be minimal (Calliet and Bedford, 1983).

Therefore, based on the best available information, the ERA team concluded, and we agree, that neither disease nor predation is currently placing the species in danger of extinction throughout its global range, now or in the foreseeable future.

Inadequacy of Existing Regulatory Mechanisms

The ERA team evaluated existing regulatory mechanisms to determine whether they may be inadequate to address threats to the common thresher shark. Existing regulatory mechanisms may include Federal, state, and international regulations for commercial and recreational fisheries, as well as the shark trade. Below is a brief description and evaluation of current and relevant domestic and international management measures that may affect the common thresher shark. More information on these domestic and international management measures can be found in the status review report (Young *et al.*, 2015) and other recent status reviews of other shark species (Miller *et al.*, 2013 and 2014).

In the U.S. Pacific, HMS fishery management is the responsibility of adjacent states and three regional management councils that were established by the Magnuson-Stevens Act: The Pacific Fishery Management Council (PFMC), the North Pacific Fishery Management Council (NPFMC), and the Western Pacific Fishery Management Council (WPFMC). On the U.S. West Coast, common thresher sharks are managed by the PFMC, under the Pacific HMS FMP, as well as the states of California, Oregon, and Washington. As a result of declining abundance, and because common threshers are considered vulnerable to overexploitation due to their low fecundity, long gestation periods, and relatively high age at maturation, the HMS FMP proposed a precautionary annual harvest guideline of 340 mt for common thresher sharks to prevent localized depletion. This guideline was implemented in 2004. Additionally, specific measures implemented for the California drift gillnet fishery for the purposes of protecting other species also help to protect common thresher sharks. Both participation and fishing effort (measured by the number of sets) have declined over the years, and industry representatives attribute the decline in vessel participation and annual effort to regulations implemented to protect marine mammals, endangered sea turtles, and seabirds. For example, in 2001, NMFS implemented two Pacific sea turtle conservation areas on the West Coast with seasonal drift gillnet restrictions to protect endangered leatherback and loggerhead turtles. In the larger of the two closures (which spans the EEZ north of Point Conception, California (34°27′ N. latitude) to mid-Oregon (45° N. latitude) and west to 129° W. longitude), drift gillnet fishing is prohibited annually within this conservation area from August 15 to November 15 to protect leatherback sea turtles. The smaller closure was implemented to protect Pacific loggerhead turtles from drift gillnet gear during a forecasted or concurrent El Niño event and is located south of Point Conception, California and west of 120° W. longitude from June 1 to August 31 (72 FR 31756). Since the leatherback closure was enacted, the number of active participants in the drift gillnet fishery declined by nearly half, from 78 vessels in 2000 to 40 in 2004, and has remained under 50 vessels since then. Although implemented for sea turtle protection, these closures help protect common thresher sharks from fishing pressures related to gillnet fishing (PFMC, 2015). The drift gillnet fishery is also managed by a limited entry permit system, with mandatory gear standards. The permit is linked to an individual fisherman, not a vessel, and is only transferable under very restrictive conditions; thus, the value of the vessel does not become artificially inflated. To keep a permit active, current permittees are required to purchase a permit from one consecutive year to the next; however, they are not required to make landings using drift gillnet gear. In addition, a general resident or non-resident commercial fishing license and a current vessel registration are required to catch and land fish caught in drift gillnet gear. A logbook is also required. The HMS FMP requires a Federal permit with a drift gillnet gear endorsement for all U.S. vessels that fish for HMS within the West Coast EEZ and for U.S. vessels that pursue HMS on the high seas (seaward of the EEZ) and land their catch in California, Oregon, or Washington. In Washington, drift gillnet fishing gear is prohibited and landings of thresher sharks are restricted under Washington Administrative Code 220–44–050. As previously mentioned, the recovery of the eastern North Pacific stock of common thresher is largely attributed to these regulatory mechanisms.

The WPFMC has jurisdiction over the EEZs of Hawaii, Territories of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, and the Pacific Remote Island Areas, as well as the domestic fisheries that occur on the adjacent high seas. The WPFMC developed the Pelagics Fishery Ecosystem Plan (FEP; formerly the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region) in 1986 and NMFS, on behalf of the U.S. Secretary of Commerce, approved the Plan in 1987. Under the FEP, thresher sharks are designated as Pelagic Management Unit Species and are subject to regulations. These regulations are intended to minimize impacts to targeted stocks as well as protected species. Fishery data are also analyzed in annual reports and used to amend the FEP as necessary. In Hawaii and American Samoa, thresher sharks are predominantly caught in longline fisheries that operate under extensive regulatory measures, including gear, permit, logbook, vessel monitoring system, and protected species workshop requirements.

In the Northwest Atlantic, the U.S. Atlantic HMS Management Division within NMFS develops regulations for Atlantic HMS fisheries, and primarily coordinates the management of Atlantic HMS fisheries in Federal waters (domestic) and the high seas (international), while individual states establish regulations for HMS in state waters. The NMFS Atlantic HMS Management Division currently manages 42 species of sharks (excluding spiny dogfish) under the Consolidated HMS FMP (NMFS, 2006). The management of these sharks is divided into five species groups: Large coastal sharks, small coastal sharks, pelagic sharks, smoothhound sharks, and prohibited sharks. Thresher sharks are managed under the pelagic sharks group, which includes both common and bigeye thresher sharks. One way that the HMS Management Division controls and monitors this commercial harvest is by requiring U.S. commercial Atlantic HMS fishermen who fish for or sell common thresher sharks to have a Federal Atlantic Directed or Incidental shark limited access permit. These permits are administered under a limited access program, and the HMS Management Division is no longer issuing new shark permits. As of October 2015, 224 U.S. fishermen are permitted to target sharks managed by the HMS Management Division in the Atlantic Ocean and Gulf of Mexico, and an additional 275 fishermen are permitted to land sharks incidentally (NMFS, 2015). Under a directed shark permit, there is no directed numeric retention limit for pelagic sharks, subject to quota limitations. An incidental permit allows fishers to keep up to a total of 16 pelagic or small coastal sharks (all species combined) per vessel per trip. Authorized gear types include: Pelagic or bottom longline, gillnet, rod and reel, handline, or bandit gear. There are no restrictions on the types of hooks that may be used to catch common thresher sharks, and there is no commercial minimum size limit. The annual quota for pelagic sharks (other than blue sharks or porbeagle sharks) is currently 488 mt dressed weight. In addition to permitting and trip limit requirements, logbook reporting or carrying an observer onboard may be required for selected commercial fishermen. The head may be removed and the shark may be gutted and bled, but the shark cannot be filleted or cut into pieces while onboard the vessel and all fins, including the tail, must remain naturally attached to the carcass through offloading.

In addition to Federal regulations, individual state fishery management agencies have authority for managing fishing activity in state waters, which usually extends from 0–3 nmi (5.6 km) off the coast in most cases, and 0–9 nmi (16.7 km) off Texas and the Gulf coast of Florida. Federally permitted shark fishermen along the Atlantic coast and in the Gulf of Mexico and Caribbean are required to follow Federal regulations in all waters, including state waters. To aid in enforcement and reduce confusion among fishermen, in 2010, the Atlantic States Marine Fisheries Commission, which regulates fisheries in state waters from Maine to Florida, implemented a Coastal Shark Fishery Management Plan that mostly mirrors the Federal regulations for sharks, including common thresher sharks.

Overall, regulations to control for overutilization of common threshers in U.S. Atlantic commercial fisheries, including quotas and trip limits, are seemingly adequate, as evidenced by stable CPUE trends for the species since the 1990s, which corresponds with the implementation of management measures for pelagic sharks under the U.S. HMS FMP. From 2009 through 2014, commercial landings of common thresher sharks have ranged from approximately 15 mt dw to 53 mt dw, and the population has seemingly stabilized under existing regulatory mechanisms in this region.

In other parts of the common thresher shark's range, the ERA team noted that effective international regulations specific to common thresher sharks are lacking, particularly in the Mediterranean. Despite several laws and regulatory mechanisms within the region (*e.g.,* EU Ban on driftnet fishing in EU waters, ICCAT ban on driftnets for large pelagics in the Mediterranean (Rec. 2003–04), and General Fisheries Commission of the Mediterranean (GFCM) ban on use of driftnets in the Mediterranean), recent investigations show common thresher sharks are being increasingly targeted in the Alboran Sea by an illegal large-scale swordfish driftnet fleet based primarily in Morocco. For example, Tudela *et al.* (2005) monitored 369 fishing operations made by the driftnet fleet between December 2002 and September 2003 and estimated a total of 4,791 common threshers caught over the 8-month sampling period. When extrapolated to 12-months, catches of common thresher sharks are estimated at about 7000–8000 individuals in the Alboran Sea alone. This suggests that regulatory mechanisms are not adequate in this region to control for overutilization as a result of intensive fishing pressure. However, some recent regulations may help to curb fishing pressure in the region. For example, in 2013, the European Parliament passed a regulation prohibiting the removal of shark fins by all vessels in EU waters and by all EU-registered vessels operating anywhere in the world. Many individual European countries have also implemented measures to stop the practice of finning and conserve shark populations. For example, in 2009, Spain enacted national legislation (Orden ARM/2689/2009) that includes specific measures prohibiting Spanish fishing vessels from catching, transshipping, landing and marketing of sharks of the Family Alopiidae (all three *Alopias* spp.) in all fisheries. This includes territorial waters of Spain and in other EU countries with which there is a fisheries agreement, and in areas that can be accessed by private agreement or contract lease of fishing vessels. This regulation went into effect in 2010. Given that Spain accounts for approximately 7.3 percent of the global shark catch (Lack and Sant, 2011) and was the largest exporter of fins in 2008, this prohibition has likely decreased total fishing mortality on the Atlantic population of thresher sharks. This is potentially evidenced by the fact that total EU catches of common threshers dropped precipitously by approximately 65 percent from 2009 to 2010, and have continued to decline since. Thus, this prohibition may be responsible for the significant decline in thresher landings by the EU reported to ICCAT since 2010, and may significantly reduce fishing pressure on common thresher sharks. In addition, the ERA team agreed that overutilization of the species in the Mediterranean, which is a small portion of the species' global range, does not necessarily constitute a high risk of extinction for the global population, now or in the foreseeable future.

In Indian Ocean waters, the main regulatory body is the IOTC, which has management measures in place specifically for thresher sharks that prohibit the landing of all *Alopias* species. Specifically, in 2010, the IOTC passed recommendation 10–05 to prohibit the retention, transshipment, landing, storing, or offering for sale any part of carcass of thresher sharks of the family Alopiidae. The IOTC also requires contracting parties (CPCs) to annually report shark catch data and provide statistics by species for a select number of sharks, including thresher sharks (Resolutions 05/05, 11/04, 08/04, 10/03, 10/02). The IOTC also developed additional shark conservation and management measures that aim to further reduce shark waste and encourage the live release of sharks, especially juveniles or pregnant females, caught incidentally (and not used for food or other purposes) in fisheries for tunas and tuna-like species. However, it is unclear how effective these measures have been. For example, in a recent status report, the IOTC's Working Party on Ecosystems and Bycatch noted that the International Plan of Action for sharks was adopted in 2000, which requires each CPC to develop a National Plan of Action (NPOA) for sharks; however, despite the time that has elapsed since then, very few CPCs have developed NPOAs for sharks, or even carried out assessments to determine whether the development of a plan is prudent. Currently, only 12 of the 35 CPCs have developed NPOAs for sharks (IOTC, 2014). Additionally, although the IOTC is the only RFMO that has specific regulations for all thresher species, the IOTC itself acknowledges that species retention bans may not be adequate for species that have high bycatch-related mortality rates. Overall, however, common threshers in particular do not appear to be caught in large numbers by fisheries in the Indian Ocean, likely a result of the species' more coastal, temperate distribution in areas where high seas longline fisheries operations are not as concentrated. In fact, it is quite possible that common thresher sharks do not occur in equatorial or tropical waters of the Indian Ocean at all (Romanov, 2015). Thus, while regulatory mechanisms to control overutilization may be problematic for more prevalent bycatch species in this region, inadequate regulations in the Indian Ocean are potentially less problematic for the common thresher shark.

On the U.S. West Coast, recreational fisheries primarily occur in non-federal waters (0–3 nmi off the coast) and are managed by the states of Washington, Oregon, and California, with inter-state coordination facilitated through the Pacific States Marine Fisheries Commission. Common thresher sharks may be retained recreationally, except in Washington State, where any fishing for *Alopias* spp. is prohibited. California recreational regulations impose a two-fish bag limit on thresher sharks. This is cumulative for multi-day trips and most anglers seldom fill bag limits. Upon a thorough review of recent California Recreational Fishery Survey data, estimates of recreational thresher shark catches were not causing cumulative landings to exceed the precautionary harvest guideline of 340 t. Further, an analysis of bag limits showed that few anglers actually caught and filled their legal limits. Finally, and as previously described, a recent stock assessment (Teo *et al.,* in prep) confirmed that removal levels of common thresher as a result of recreational fisheries are presently sustainable and not contributing to the overutilization of the species. Thus, it appears that recreational fisheries management of the U.S. West Coast population of thresher shark is precautionary, and ensures that cumulative catches (recreational + commercial) do not exceed the harvest guideline (*i.e.,* 340 mt) nor the maximum sustainable yield (MSY) (*i.e.,* 806 mt) for the species.

In the U.S. Atlantic, an HMS permit (either Angling or Charter/Headboat) is required for recreational fishing for sharks in Federal waters. Common thresher sharks may be retained recreationally using authorized fishing gear, including rod and reel and handline. There are no restrictions on the types of hooks that may be used to catch Atlantic sharks on these gear types. Common thresher sharks that are kept must have a minimum size of 54 inches (4.5 feet; 137 cm) FL. Sharks that are under the minimum size must be released, and only one shark, which could be a common thresher shark, may be kept per vessel per trip (note, there are exceptions to the retention limit and size limit for Atlantic sharpnose, bonnethead, and smoothhound sharks). Since 2008, recreational fishermen have been required to land all sharks with their head, fins, and tail naturally attached. Thus, there are some management measures in place to regulate recreational catches of common thresher sharks, including bag and size limits. As described previously, an estimated 17,834 common thresher sharks were caught in the rod and reef fishery in the U.S. Northwest Atlantic from 2004–2013, with approximately 70 percent retained. Additionally, size limits for common thresher sharks imposed by the various states under the ASMFC may not be helpful for reducing recreational fishing pressure because the size limit (137 cm FL) is significantly lower than the reported size of maturity in the Northwest Atlantic, and thus, allows for sexually immature juveniles to be caught and landed. However, recreational fisheries, and in particular tournaments, may have their own size limits that are larger than 137 cm FL because they typically tend to target the largest sharks. Despite the increases in popularity and targeting of common thresher sharks in recreational fisheries in the Northeast United States, standardized tournament data that account for changes in effort show increasing relative abundance of common thresher sharks in recent years. This information, combined with a stable CPUE trend from commercial fisheries, indicates that the population is stable and removals via recreational fisheries are likely sustainable.

In addition to commercial and recreational fishing regulations, the United States has implemented a couple of significant laws for the conservation and management of sharks: the Shark Finning Prohibition Act and the Shark Conservation Act. The Shark Finning Prohibition Act was enacted in December 2000 and implemented by final rule on February 11, 2002 (67 FR 6194), and prohibited any person under U.S. jurisdiction from: (i) Engaging in the finning of sharks; (ii) possessing shark fins aboard a fishing vessel without the corresponding carcass; and (iii) landing shark fins without the corresponding carcass. It also implemented a five percent fin to carcass ratio, creating a rebuttable presumption that fins landed from a fishing vessel or found on board a fishing vessel were taken, held, or landed in violation of the Act if the total weight of fins landed or found on board the vessel exceeded five percent of the total weight of carcasses landed or found on board the vessel. The Shark Conservation Act was signed into law on January 4, 2011, and, with a limited exception for smooth dogfish (*Mustelus canis*), prohibits any person from removing shark fins at sea, or possessing, transferring, or landing shark fins unless they are naturally attached to the corresponding carcass.

After the passage of the Shark Finning Prohibition Act, U.S. exports of dried shark fins significantly dropped, which was expected. In 2011, with the passage of the U.S. Shark Conservation Act, exports of dried shark fins dropped again, by 58 percent, to 15 mt, the second lowest export amount since 2001. This is in contrast to the price per kg of shark fin, which was at its highest price of ~$100/kg, and suggests that existing regulations have likely been effective at discouraging fishing for sharks solely for the purpose of the fin trade. Thus, although the international shark fin trade is likely a driving force behind the overutilization of many global shark species, the U.S. participation in this trade appears to be diminishing. In 2012, the value of fins also decreased, suggesting that the worldwide demand for fins may be on a decline. For example, a decrease in U.S. fin prices coincided with the implementation of fin bans in various U.S. states in 2012 and 2013, and U.S. shark fin exports have continued on a declining trend. However, it should be noted that the continued decline is also likely a result of the waning global demand for shark fins altogether. Similarly, many U.S. states, especially on the West Coast, and U.S. Flag Pacific Island Territories have also passed fin bans and trade regulations, subsequently decreasing the United States' contribution to the fin trade. For example, after the State of Hawaii prohibited finning in its waters and required shark fins to be landed with their corresponding carcasses in the state in 2000, the shark fin exports from the United States into Hong Kong declined significantly in 2001 (54 percent decrease, from 374 to 171 t) as Hawaii could therefore no longer be used as a fin trading center for the international fisheries operating and finning in the Central Pacific (Clarke *et al.*, 2007). As described previously, landings of thresher sharks declined since 2000 in both American Samoa and Hawaii, presumably due to the implementation of shark finning regulations. Thus, these regulations are likely conferring a conservation benefit for thresher sharks.

Internationally, the RFMOs that cover the Atlantic, Indian and Pacific Oceans, including ICCAT, IOTC, the Western and Central Pacific Fisheries Commission (WCPFC), and the Inter-American Tropical Tuna Commission (IATTC), require the full utilization of any retained catches of sharks, with a regulation that onboard fins cannot weigh more than five percent of the weight of the sharks (*i.e.*, the five percent fin to carcass ratio). These regulations are aimed at curbing the practice of shark finning, but do not prohibit the fishing of sharks. In addition, these regulations may not be as effective in stopping finning of sharks compared to those that require fins to be naturally attached, as a recent study found many shark species, including the common thresher shark, to have an average wet-fin-to-round-mass ratio of less than five percent (Biery and Pauly, 2012). In other words, fishing vessels operating in these RFMO convention areas may be able to land more shark fins than bodies and still pass inspection. However, these RFMOs do encourage the release of live sharks, especially juveniles and pregnant females that are caught incidentally and are not used for food and/or subsistence in fisheries, and request the submission of data related to catches of sharks, down to the species level where possible.

While the ERA team initially expressed some concern regarding finning of common thresher sharks for the international shark fin trade, they noted that the situation appears to be improving due to current regulations (*e.g.*, increasing number of finning bans) and trends (*e.g.*, waning demand for shark fins), and may not be as severe a threat to common thresher sharks compared to other species, as some evidence suggests that thresher shark fins are not preferred or "first choice" among some traders (Rose, 1996; FAO, 2002; Gilman *et al.*, 2007; Clarke pers. comm. 2015). Additionally, unlike bigeye and pelagic thresher shark fins, common thresher shark fins have been rarely identified as present in several genetic tests of fins throughout various portions of the species' range. Also, as discussed above (with further details in Young *et al.*, 2015), finning bans have been implemented by a number of countries, as well as by nine RFMOs. These finning bans range from requiring fins remain attached to the body to allowing fishermen to remove shark fins provided that the weight of the fins does not exceed five percent of the total weight of shark carcasses landed or found onboard. These regulations are aimed at stopping the practice of killing and disposing of shark carcasses at sea and only retaining the fins. Although they do not prohibit shark fishing, they work to decrease the number of sharks killed solely for the international shark fin trade, with some more effective than others.

In addition to these finning bans, there has been a recent push to decrease the demand of shark fins, especially for shark fin soup. For example, in a recent report from WildAid, Whitcraft *et al.* (2014) reported the following regarding the declining demand for shark fins: An 82 percent decline in sales reported by shark fin vendors in Guangzhou, China and a decrease in prices (47 percent retail and 57 percent wholesale) over the past 2 years; 85 percent of Chinese consumers surveyed online said they gave up shark fin soup within the past 3 years, and two-thirds of these respondents cited awareness campaigns as a reason for ending their shark fin consumption; 43 percent of consumers responded that much of the shark fin in the market is fake; 24 airlines, 3 shipping lines, and 5 hotel groups have banned shark fin from their operations; there has been an 80 percent decline from 2007 levels in prices paid to fishermen in Tanjung Luar and Lombok in Indonesia and a decline of 19 percent since 2002–2003 in Central Maluku, Southeastern Maluku and East Nusa Tenggara; and of 20 Beijing restaurant representatives interviewed, 19 reported a significant decline in shark fin consumption. Thus, given that thresher fins are not among the most prized in the international shark fin trade (and, in fact, are considered of low value to some traders), combined with a lack of evidence of common thresher fins in several prominent markets, the extent of utilization on common thresher sharks for this trade was not viewed as significant enough to decrease the species' abundance to the point where it may be at risk of extinction due to environmental variation, anthropogenic perturbations, or depensatory processes. Additionally, as the supply of shark fins continues to decline (as demonstrated by the increase in finning bans and other regulations) and demand for shark fins also continues to decline (as demonstrated by decreases in prices of shark fin food products), so should the threat of finning and illegal harvest. Finally, and as previously discussed (refer back to the *Overutilization for commercial, recreational, scientific, or educational purposes* section), although there has been a recent shift in demand from shark fins to shark meat, we have no evidence to suggest that the species is experiencing increased mortality in fisheries as a result of this shift in the international market.

Based on the above review of regulatory measures (in addition to the regulations described in Young *et al.*, 2015), the ERA team concluded that these existing regulations are not inadequate such that they contribute significantly to the species' risk of extinction throughout its global range. In fact, the team noted that some areas of the species' range do have adequate measures in place to prevent overutilization, such as in the Northeast Pacific and Northwest Atlantic, where U.S. fishery management measures are helping to monitor the catch of common thresher and prevent any further population declines. Thus, these U.S. conservation and management measures (as previously summarized with additional details in Young *et al.*, 2015) are adequate and do not contribute to the extinction risk of the common thresher shark by increasing demographic risks (*e.g.*, further abundance declines) or the threat of overutilization (*e.g.*, unsustainable catch rates) currently and in the foreseeable future. Although regulations specific to common thresher sharks are lacking in other parts of its range, fishery interactions are rare (with the exception of the Mediterranean) and thus the effects of the current regulatory measures do not appear to be significantly increasing the species' risk of extinction. This species appears to be naturally rare in many fisheries throughout its global range, and overutilization of the species is not considered a significant threat (see *Overutilization for Commercial, Recreational, Scientific or Educational Purpose* section discussed earlier in this notice). Therefore, based on the best available information, we find that the threat of inadequate regulatory mechanisms is not likely contributing to the species' risk of extinction throughout its global range; however, we recognize that improvements are needed in the monitoring and reporting of fishery interactions of this species.

Other Natural or Manmade Factors Affecting Its Continued Existence

As previously described, the ERA team assessed the effects of climate change as a potential threat to common thresher sharks; however, since most of the studied impacts from climate change are habitat-focused, the threat of climate change is addressed in the *Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range* section of this finding. Other threats that fall under Factor E (ESA section 4(a)(1)(E)), including pollution and potential threats to important prey species, are addressed in the status review report (Young *et al.*, 2015), but were not identified as threats that rose to the level of increasing the species' risk of extinction.

Overall Risk Summary

Guided by the results from the demographic risk analysis and threats assessment, the ERA team members used their informed professional judgment to make an overall extinction risk determination for the common thresher shark now and in the foreseeable future. The ERA team concluded that the common thresher shark currently has a low risk of extinction. However, due to the lack of abundance trends and catch data for a large portion of the species' range (*e.g.*, Western and Central Pacific and Indian Oceans), as well as potentially significant declines observed in a small portion of the range (*e.g.*, Mediterranean), the ERA team expressed some uncertainty by placing some likelihood points in the "moderate risk" and "high risk" categories as well. Likelihood points attributed to the overall level of extinction risk categories were as follows: Low Risk (52.5/70), Moderate Risk (14.5/70), High Risk (3/70). The ERA team reiterated that in most areas (with the exception of the Mediterranean), common thresher abundance trends are stable, increasing, or not discernable. There is also no evidence to suggest depensatory processes are currently at work. The species is found globally, throughout its historical range, appears to be well-adapted, and is not limited by habitat. The team noted that the only available stock assessment of common thresher is from the eastern North Pacific. The stock assessment (Teo *et al.*, in prep) shows that although common threshers experienced a significant historical decline in the 1980s, the species has recovered to more than 90 percent of virgin, pre-fished levels. As discussed previously, there were flaws in the other studies cited within the status review report, including the fact that most of these studies are not species-specific, as well as questionable species identification within the datasets (as only recently has more attention been paid to accurately identifying thresher sharks down to species). Some of these studies have also been criticized for a number of other issues, including relying on fisheries logbook data, variation in locations between surveys and differences in data sources (*e.g.*, fishery-independent data vs. fishery-dependent data), and not accounting for other various factors that may have affected the outcomes. After considering the flaws within the datasets, as well as conducting separate analyses of available and arguably more reliable observer data, the ERA team found the results do not demonstrate that the common thresher shark is at risk of extinction due to its current abundance. Throughout the species' range, observations of its abundance are variable, with reports of increasing, decreasing, and stable or no trends. The species is also rare in fisheries data in a large portion of its range (Western and Central Pacific, Indian, and South Atlantic Oceans), either due to lack of reporting or because the species is simply not present in common fishing grounds (or not susceptible to fishing gear, see Ecological Risk Assessment results). As the main threat that the ERA team identified was overutilization due to fisheries (with references to historical overutilization), the absence of the species in fisheries data in a large portion of its range suggests that this threat is either being minimized by existing regulations or is not significantly contributing to the extinction risk of the species at this time (as the abundance data do not indicate that the species has been fished to near extinction).

The available information indicates that most of the observed declines occurred in the 1980s, before any significant management regulations. Since then, current regulatory measures in some parts of the common thresher shark's range are minimizing the threat of overutilization. For example, the recovery of the common thresher population on the U.S. West Coast is largely attributed to the conservative management regulations implemented for the California swordfish/shark gillnet fishery. Additionally, the comprehensive science-based management and enforceable and effective regulatory structure within the U.S. Northwest Atlantic will help monitor and prevent further declines of common thresher sharks while in these waters, and the implementation of Spain's regulation on the prohibition of landing or selling all *Alopias* spp. will provide increased protection for common thresher sharks throughout the entire Atlantic Ocean into the foreseeable future. In the rest of the species' range, rare fisheries interactions seem to imply that the species' more coastal and temperate distribution may buffer the species from exposure to intensive fishing pressure by industrial high seas fisheries, which concentrate the majority of fishing effort in more tropical waters. In addition, existing management measures (such as RFMO recommendations, national shark fishing measures, and shark fin bans) may be effective at minimizing overutilization of the species, with trends that are moving toward more restrictive trade and decreased demand in shark fin products, which indicate a decreased likelihood of extinction of the global population in the foreseeable future. Thus, given the best available information, the ERA concluded that over the next 30 years, it is unlikely that the common thresher shark will have a high risk of extinction throughout its global range, due to trends in its abundance, productivity, spatial structure, or diversity or influenced by stochastic or depensatory processes.

Significant Portion of Its Range

If we find that the common thresher shark is not in danger of extinction now or in the foreseeable future throughout its range, under the Significant Portion of its Range (SPR) Policy, we must go on to evaluate whether the species is in danger of extinction, or likely to become so in the foreseeable future, in a "significant portion of its range" (79 FR 37578; July 1, 2014).

The SPR Policy explains that it is necessary to fully evaluate a particular portion for potential listing under the "significant portion of its range" authority only if substantial information indicates that the members of the species in a particular area are likely *both* to meet the test for biological significance *and* to be currently endangered or threatened in that area. Making this preliminary determination triggers a need for further review, but does not prejudge whether the portion actually meets these standards such that the species should be listed. To identify only those portions that warrant further consideration, we will determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required (79 FR 37578, at 37586; July 1, 2014).

Thus, the preliminary determination that a portion may be both significant and endangered or threatened merely requires NMFS to engage in a more detailed analysis to determine whether the standards are actually met (79 FR 37578, at 37587). Unless both standards are met, listing is not warranted. The SPR policy further explains that, depending on the particular facts of each situation, NMFS may find it is more efficient to address the significance issue first, but in other cases it will make more sense to examine the status of the species in the potentially significant portions first. Whichever question is asked first, an affirmative answer is required to proceed to the second question. *Id.* "[I]f we determine that a portion of the range is not 'significant,' we will not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we will not need to determine if that portion is 'significant' " *Id.* Thus, if the answer to the first question is negative—whether that regards the significance question or the status question—then the analysis concludes and listing is not warranted.

As defined in the SPR Policy, a portion of a species' range is "significant" "if the species is not currently endangered or threatened throughout its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range" (79 FR 37578, at 37609). For purposes of the SPR Policy, "[t]he range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination. This range includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (*e.g.,* seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but it cannot constitute a significant portion of a species' range" *Id.*

Applying the SPR policy to the common thresher shark, we first evaluated whether there is substantial information indicating that the species may be threatened or endangered in any portion of its range. After a review of the best available information, the ERA team concluded, and we agree, that the Mediterranean region likely has more concentrated threats than other regions of the common thresher's range, placing the species at an increased risk of extinction within this portion. However, in determining whether this portion of the species' range also meets the "significance" test under the SPR Policy, the ERA team concluded that the Mediterranean represents a small portion of the global range of the common thresher shark, and the loss of that portion would not result in the remainder of the species being endangered or threatened, particularly given the fact that there is no evidence to suggest the species makes trans-Atlantic migrations, and thus that other portions of the species' global population would be at risk from threats in the Mediterranean region. In particular, we did not find substantial evidence to indicate that the loss of this portion would result in a level of abundance for the remainder of the species to be so low or variable, that it would cause the species to be at a moderate or high risk of extinction due to environmental variation, anthropogenic perturbations, or depensatory processes. We also could not find any substantial evidence to suggest that the loss of the Mediterranean portion of its range would isolate the species to the point where the remaining populations would be at risk of extinction from demographic processes. We also found no evidence to suggest that the loss of genetic diversity from this portion would result in the remaining population lacking enough genetic diversity to allow for adaptations to changing environmental conditions. Although there is preliminary evidence of possible genetic partitioning between ocean basins, this was based on one study with a limited sample size (see Trejo, 2005_ENREF_224). Since common thresher sharks are globally distributed and highly mobile, we did not find that the loss of the Mediterranean portion would severely fragment and isolate the common thresher population to the point where individuals would be precluded from moving to suitable habitats or have an increased vulnerability to threats. Areas exhibiting source-sink dynamics, which could affect the survival of the species, were not evident in any part of the common thresher shark range. There is also no evidence that the Mediterranean portion of the range encompasses aspects that are important to specific life history events that other portions do not, where loss of the former portion would severely impact the growth, reproduction, or survival of the entire species. There is also little to no information regarding nursery grounds or other important habitats utilized by the species that could be considered limiting factors for the species' survival. In fact, we found evidence that there are likely reproductive grounds and nursery areas in all three major ocean basins. In other words, the viability of the species does not appear to depend on the productivity of the population or the environmental characteristics in the Mediterranean portion of the range. Overall, we did not find any evidence to suggest that this specific portion of the species' range has increased importance over any other with respect to the species' survival. As such, the Mediterranean region does not meet the significance criteria under the SPR policy. We could not identify any other portions of the common thresher shark range in which the species is in danger of extinction, or likely to become so in the foreseeable future, and thus our SPR analysis ends.

Final Determination

Section 4(b)(1) of the ESA requires that NMFS make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information, including the petition, public comments submitted on the 90-day finding (80 FR 11379; March 3, 2015), the status review report (Young *et al.*, 2015), and other published and unpublished information, and we have consulted with species experts and individuals familiar with common thresher sharks. We considered each of the Section 4(a)(1) factors to determine whether it contributed significantly to the extinction risk of the species on its own. We also considered the combination of those factors to determine whether they collectively contributed significantly to the extinction risk of the species. As previously explained, we could not identify any portion of the species' range that met both criteria of the SPR policy. Although the Mediterranean region was identified as a portion of the range in which the common thresher has a higher risk of extinction due to concentrated threats, we could not identify this portion as "significant." Additionally, we could not identify any other portion of the species' range in which the species is currently in danger of extinction or likely to become so in the foreseeable future. Therefore, our determination set forth below is based on a synthesis and integration of the foregoing information, factors and considerations, and their effects on the status of the species throughout its entire range.

We conclude that the common thresher shark is not presently in danger of extinction, nor is it likely to become so in the foreseeable future, throughout all of its range. We summarize the factors supporting this conclusion as follows: (1) The species is broadly distributed over a large geographic range, with no barrier to dispersal; (2) there is no evidence of a range contraction and there is no evidence of habitat loss or destruction; (3) while the species possesses life history characteristics that increase its vulnerability to harvest, it has been found to be less susceptible to pelagic longline fisheries compared to other shark species (based on results from Ecological Risk Assessments), decreasing the chance of substantial fishing mortality from this fishery that operates throughout its range; (4) the best available information indicates that abundance is variable across the species' range, with reports of localized population declines but also evidence of stable and/or increasing abundance estimates; (5) based on the ERA team's assessment, while the current population size has likely declined from historical numbers, it is sufficient to maintain population viability into the foreseeable future; (6) the main threat to the species is fishery-related mortality from global fisheries; however, information on harvest rates is inconclusive due to poor species discrimination and significant uncertainties in the data, with the best available information indicating low utilization of the species (rare in tropical fisheries records in both the Western and Central Pacific and Indian Oceans as well as the South Atlantic, and rarely identified as present in several genetic tests of shark fins from markets throughout its range); (7) there is no evidence that disease or predation is contributing to increasing the risk of extinction of the species; (8) existing regulatory mechanisms throughout a large portion of the species' range appear effective in addressing the most important threats to the species (harvest); (9) there is no evidence that other natural or manmade factors are contributing to increasing the risk of extinction of the species; and, (10) while the global population has likely declined from historical numbers, there is no evidence that the species is currently suffering from depensatory processes (such as reduced likelihood of finding a mate or mate choice or diminished fertilization and recruitment success) or is at risk of extinction due to environmental variation or anthropogenic perturbations. Finally, and as previously described in the SPR analysis above, we determined that the species is not threatened or endangered in a significant portion of its range.

Based on these findings, we conclude that the common thresher shark is not currently in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so within the foreseeable future. Accordingly, the common thresher shark does not meet the definition of a threatened or endangered species, and thus, the common thresher shark does not warrant listing as threatened or endangered at this time.

Bigeye Thresher Shark (*Alopias superciliosus*)

Species Description

The bigeye thresher shark (*Alopias superciliosus*) has a broad head, moderately long and bulbous snout, curved yet broad-tipped pectoral fins, distinctive grooves on the head above the gills, and large teeth. The first dorsal-fin midbase is closer to the pelvic-fin bases than to the pectoral-fin bases. The caudal tip is broad with a wide terminal lobe. While some of the above characteristics may be shared by other thresher shark species, diagnostic features separating this species from the other two thresher shark species (common and pelagic thresher) are their extremely large eyes, which extend onto the dorsal surface of the head, and the prominent notches that run dorso-lateral from behind the eyes to behind the gills. The body can be purplish grey or grey-brown on the upper surface and sides, with grey to white coloring on its underside; however, unlike the common thresher, the light color of the abdomen does not extend over the pectoral fins and there is no white dot on the upper pectoral fin tips like those often seen in common threshers (Compagno, 2001).

Current Distribution

The bigeye thresher shark is a large, highly migratory oceanic and coastal species of shark found throughout the world in tropical and temperate seas. In the western Atlantic (including the Gulf of Mexico), bigeye threshers can be found off the Atlantic coast of the United States (from New York to Florida), and in the Gulf of Mexico off Florida, Mississippi and Texas. They can also be found in Mexico (from Veracruz to Yucatan), Bahamas, Cuba, Venezuela, as well as central and southern Brazil. In the eastern Atlantic, bigeye threshers are found from Portugal to the Western Cape of South Africa, including the western and central Mediterranean Sea. In the Indian Ocean, bigeye threshers are found in South Africa (Eastern Cape and KwaZulu-Natal), Madagascar, Arabian Sea (Somalia), Gulf of Aden, Maldives, and Sri Lanka. In the Pacific Ocean, from west to east, bigeye threshers are known from southern Japan (including Okinawa), Taiwan (Province of China), Vietnam, between the Northern Mariana Islands and Wake Island, down to the northwestern coast of Australia and New Zealand, as well as American Samoa. Moving to the Central Pacific, bigeye threshers are known from the waters surrounding Wake, Marshall, Howland and Baker, Palmyra, Johnston, Hawaiian Islands, Line Islands, and between Marquesas and Galapagos Islands. Finally, in the Eastern Pacific, bigeye threshers occur from Canada to Mexico (Gulf of California) and west of Galapagos Islands (Ecuador). They are also possibly found off Peru and northern Chile (Compagno, 2001; Ebert *et al.*, 2014).

Habitat Use and Movement

Bigeye thresher sharks are found in a diverse spectrum of locations, including in coastal waters over continental shelves, on the high seas in the epipelagic zone far from land, in deep waters near the bottom on continental slopes, and sometimes in shallow inshore waters. They are an epipelagic, neritic, and epibenthic shark, ranging from the surface and in the intertidal to at least 500 m deep, and have even been recorded as deep as 723 m (Nakano *et al.*, 2003), but mostly occur in depths below 100 m (Compagno, 2001). Bigeye threshers are known to endure colder water and remain longer in deeper waters than many other pelagic sharks (Gruber and Compagno, 1981; Fernandez-Carvalho *et al.*, 2015). Like common threshers, bigeye thresher sharks are also known to make daily diel vertical migrations, spending most of their day below the thermocline, and most of the night in the mixed layer and upper thermocline (Nakano *et al.*, 2003; Weng and Block, 2004; Kohin *et al.*, 2006; Stevens *et al.*, 2009; Musyl *et al.*, 2011). In the Marshall Islands, Cao *et al.* (2011) identified a preferred optimum swimming depth of 240–360 m, water temperature of 10–16 °C, salinity of 34.5–34.7 ppt and dissolved oxygen range of 3.0–4.0 ml/l for bigeye threshers. Nakano *et al.* (2003) recorded the deepest dive to date in the Eastern Tropical Pacific, extending the known depth distribution for bigeye thresher to 723 m.

In the Atlantic, mark/recapture data (number tagged = 400 and number recaptured = 12) from the NMFS CSTP between 1963 and 2013 showed that the range of movement for the bigeye thresher was much larger than for the common thresher (Kohler, 1998; Kohler and Turner, 2001; NMFS, unpublished data), with a maximum straight-line distance travelled of 2,067 nmi (3,828 km; NMFS, unpublished data). This transatlantic movement was from a shark tagged in 1984 by a NMFS shark biologist 565 nmi (1046 km) southwest of the Cape Verde Islands off the west coast of Africa and recaptured in 1994 by a commercial longliner 19 nmi (35 km) off the Venezuelan coast (NMFS, unpublished data), confirming that this species is highly migratory.

Diet

Bigeye threshers have larger teeth than common threshers and feed on a wider variety of prey, including small to medium sized pelagic fishes (*e.g.*, lancetfishes, herring, mackerel and small billfishes), bottom fishes (*e.g.*, hake) and cephalopods (*e.g.*, squids). Thus, the bigeye thresher appears to be an opportunistic feeder, foraging on diverse species covering a broad range of habitats, whereas niche separation is more apparent for common threshers (Preti *et al.* 2008). The arrangement of the eyes, with keyhole-shaped orbits extending onto the dorsal surface of the head, suggest that this species has a dorsal/vertical binocular field of vision (unlike other threshers), which may be related to fixating on prey and striking them with its tail from below (FAO, 2015). Based on a study at the NMFS SWFSC, the top five prey species, in order, are barracudinas, Pacific hake, Pacific saury, Pacific mackerel, and northern anchovy. At least eight cephalopod species were also observed, although most species were found in only a few stomachs (Preti *et al.*, 2008).

Reproduction

The bigeye thresher has the slowest growth rate and is the least productive compared to the other *Alopias* species. It reaches maturity at a later age than the common thresher, about 10 years for males and 13 years for females. In terms of size, females attain maturity generally around 332–355 cm TL while males reach maturity at smaller sizes (generally around 270–288 cm TL) (see Table 2 in Young *et al.*, 2015). Like other thresher species, the reproductive mode of bigeye thresher is aplacental viviparity with oophagy; however, bigeye threshers usually bear only two pups per litter—one per uterus (although cases of up to four embryos may occur), resulting in an extremely low fecundity. The gestation period may be 12 months long, but remains uncertain due to a lack of birthing seasonality data (Liu *et al.*, 1998). However, there have been some observations and hypotheses regarding potential birthing seasons and nursery areas of bigeye thresher sharks from various parts of its range, including summer, fall, and winter in the Florida Straits. Another nursery for this species may exist in nearshore Cuban waters, as many small juveniles and females with full-term litters have been observed there (Guitart, 1975 cited in Camhi *et al.*, 2008). Moreno and Morón (1992) concluded that birth occurs over a protracted period from autumn to winter in the Strait of Gibraltar. More recently, Fernandez-Carvalho *et al.* (2015) observed the presence of large embryos (closer to the size at birth) in October/November in the northeast Atlantic and in March in the Southwest Atlantic, which seems to suggest that birth may be taking place during late summer and autumn in both hemispheres. This corroborates what has been previously suggested for both regions, particularly by Moreno and Morón (1992) for the Northeast, that a nursery area for this species exists off the southwestern Iberian Peninsula based on the records of several pregnant females. In fact, Fernandez-Carvalho *et al.* (2015) hypothesize that such an area not only exists, but possibly extends farther south, into the tropical Northeast Atlantic and equatorial waters closer to the African continent. This may be validated by the fact that smaller and mainly juvenile specimens tended to be captured in the tropical Northeast and equatorial waters, as well as pregnant females both in mid- and late-term stages. Another cluster of pregnant females was recorded in the Southwest Atlantic, some close to the Rio Grande Rise and a few inside the Uruguayan EEZ, suggesting these areas may also be nurseries for this species in the South Atlantic. This was previously suggested in a study by Amorim *et al.* (1998), who also reported the presence of pregnant females in this area. In contrast, a different reproduction and birth seasonality may exist in the Pacific Ocean, where Matsunaga and Yokawa (2013) reported that neonates (<80 cm pre-caudal length) were caught mainly during winter and spring in an area between 10 and 15 °N.

Size and Growth

Bigeye threshers have a maximum estimated age of about 20 years, and can grow to a maximum total length of 504 cm (TL) depending on sex and geographic location. Growth rates are also different depending on geographic location. Male bigeye thresher sharks are thought to grow slightly faster than females (with a growth coefficient, k, of 0.088/year for males and 0.092/year for females in the Northwest Pacific and 0.18/year for males and 0.06/year for females in the eastern Atlantic) but reach a smaller asymptotic size (206 cm FL for males versus 293 cm FL for females) (Liu *et al.*, 1998; Fernandez-Carvalho *et al.*, 2011). Using life history parameters from the eastern central Atlantic, Cortés *et al.* (2012) estimated productivity of the bigeye thresher shark, determined as intrinsic rate of population increase (*r*), to be 0.009 per year (median). Overall, the best available data indicate that the bigeye thresher shark is a long-lived species (at least 20 years) and can be characterized as having low productivity (based on the Food and Agriculture Organization of the United Nations (FAO) productivity indices for exploited fish species, where $r < 0.14$ is considered low productivity), making them generally vulnerable to depletion and potentially slow to recover from overexploitation.

Current Status

Bigeye thresher sharks can be found worldwide, with no present indication of a range contraction. Although they are generally not targeted, they are caught as bycatch in many global fisheries, including bottom and pelagic longline tuna and swordfish fisheries, purse seine fisheries, coastal gillnet fisheries, and artisanal fisheries. Bigeye thresher sharks are more commonly utilized for their meat than fins, as they are a preferred species for human consumption (although not as preferred as the common thresher); however, they are also valuable as incidental catch for the international shark fin trade.

In 2009, the IUCN considered the bigeye thresher shark to be Vulnerable globally, based on an assessment by Amorim *et al.* (2009) and its own criteria (A2bd), and placed the species on its "Red List." As noted previously, under criteria A2bd, a species may be classified as Vulnerable when its "observed, estimated, inferred or suspected" population size is reduced by 30 percent or more over the last 10 years, or over a 3-generation period, whichever is the longer, and where the causes of the reduction may not have ceased or may not be understood or may not be reversible, based on an index of abundance appropriate to the taxon and/or the actual or potential levels of exploitation. The IUCN justification for the categorization is based on the bigeye thresher's suspected declining populations as result of a combination of slow life history characteristics (hence low capacity to recover from moderate levels of exploitation), and high levels of largely unmanaged and unreported mortality in target and bycatch fisheries. As a note, the IUCN classification for the bigeye thresher shark alone does not provide the rationale for a listing recommendation under the ESA, but the classification and the sources of information that the classification is based upon are evaluated in light of the standards on extinction risk and impacts or threats to the species.

Distinct Population Segment Analysis

The petition to list the bigeye thresher shark requested NMFS to list it throughout its range, or alternatively, as DPSs should NMFS find they exist. The ERA team was asked to examine the best available data to determine whether DPSs may exist for this species. The petition, itself, did not provide any information regarding potential DPSs of bigeye thresher shark, aside from requesting that NMFS consider using the regions/populations as outlined and delimited in the petition (*i.e.,* Northwest and Western Central Atlantic, Southwest Atlantic, Mediterranean Sea and Eastern Atlantic, Indo-West Pacific, and Eastern Central Pacific). The petition did not otherwise provide support to identify any DPSs of bigeye thresher shark. As previously noted, to meet the definition of a DPS, a population must be both discrete from other populations of the species and significant to the species as a whole (61 FR 4722; February 7, 1996). The petition did not provide biological evidence to support the existence of any "subpopulations" nor did the petition propose any boundaries for DPSs. Additionally, the petition did not describe in any detail the ways in which different management relating to international governmental boundaries may delineate the species into boundaries aligning with the suggested regions/populations. Specific gaps in management or intergovernmental boundaries were not described as they relate to any of the suggested regions/populations. In our review of the best available data, we were also unable to find information to define any DPSs as discrete on biological grounds. We found only two preliminary studies to suggest population structure of the bigeye thresher shark. Trejo (2005) examined mitochondrial control region DNA, which demonstrated significant population structure between most pairwise comparisons, but the sample sizes were extremely low, and thus the results could not be interpreted with confidence. The data results support shallow population structure between Indo-Pacific and Atlantic populations, but not among populations spanning the entire Indo-Pacific Ocean (Trejo, 2005). In a genetic analysis by Naylor *et al.* (2012), little difference was seen among nine specimens spanning much of the global distribution of the species. Based on the preliminary nature of these data, and low sample size throughout the studies, these results cannot be relied upon to divide the bigeye thresher shark into any discrete populations. In our review of the best available data, we were also unable to find information to define any DPSs as discrete based on any other physical, physiological, ecological, or behavioral factors or based on differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms across any international governmental boundaries that would be significant in light of potential threats to the species. Thus, we concluded that the best available information does not indicate that any population segment of the bigeye thresher shark would qualify as a DPS under the DPS policy. As such, we conducted the extinction risk analysis on the global bigeye thresher shark population.

Assessment of Extinction Risk

Please refer back to the *Assessment of Extinction Risk* section for the common thresher for statutory definitions and methods of the extinction risk assessment. In terms of determining a reasonable foreseeable future timeframe for the bigeye thresher, the ERA team first considered the life history of the species. Longevity of the bigeye thresher is estimated to be about 25 years. Generation time, which is defined as the time it takes, on average, for a sexually mature female bigeye thresher shark to be replaced by offspring with the same spawning capacity, is estimated to be approximately 17.8 years. As a late-maturing species (like the common thresher), with relatively slow growth rates and low productivity, it would likely take more than a generation time for any conservative management action to be realized and reflected in population abundance indices. As previously described, this is supported by the fact that we have a well-documented example of how these species respond to intense fishing pressure, and the time required for the initial implementation of regulatory measures to be reflected in population abundance indices (refer back to the common thresher *Assessment of Extinction Risk* section for more details). Thus, given that the bigeye thresher has lower productivity than the common thresher, the ERA team assumed that the time required to observe changes in abundance indices would be longer, and would also similarly comport with 3 generation times (*i.e.,* 50 years). The ERA team then discussed whether they could confidently predict the impact of threats on the species out to 50 years and agreed that since the main threats to the species were likely fisheries and the regulatory measures that manage these fisheries, they had the background knowledge and expertise to confidently predict the impact of these threats on the biological status of the species within this timeframe. For the foregoing reasons, the ERA team concluded, and we agree, that a biologically reasonable foreseeable future timeframe would be 50 years for the bigeye thresher.

Evaluation of Demographic Risks

Abundance

Currently, there is a lack of reliable species-specific global population size estimates, population assessments, and trends in abundance for the bigeye thresher shark. As previously noted, using a thresher complex or other thresher species as a proxy for bigeye thresher abundance could be erroneous because of the differences in the species' distributions as well as the proportions they make up in commercial catches. In most areas showing overall declines in Alopiids, it is uncertain which thresher species the declines are more likely attributable to, although most declines are likely attributable to either the bigeye or pelagic thresher rather than common threshers, with the exception of the Mediterranean. Additionally, there are also long-term misidentification issues between thresher sharks, which means historical data regarding thresher catch is likely not entirely accurate. The ERA team expressed some concern regarding the bigeye thresher shark's global abundance, particularly given that the species likely experienced localized population declines over the past few decades. Given the lack of data, and the fact that most of the available information is not specific to bigeye thresher, the extent of the declines and current status of the global population are unclear. However, some information, including species-specific analyses of standardized observer data from the Northwest Atlantic and Hawaii, provide some insight into the current abundance levels of the species.

Bigeye thresher shark populations have likely exhibited historical declines in abundance relative to virgin biomass levels, but information regarding the magnitude of these declines is poor. In areas where more recent indicators of abundance for bigeye thresher are available (*i.e.,* standardized CPUE trends), abundance trends are highly variable. In the Northwest Atlantic, it is likely that the bigeye thresher population suffered a significant historical decline (refer back to the discussion of Baum *et al.* (2003) and Cortés (2007) in the common thresher *Demographic Risk Assessment—Abundance* section); however, the ERA team questioned the magnitude of these declines, noting several issues with the available information, including the following: The data used were not species-specific, the time series ended in 2006, and the data were based on fisheries logbooks rather than observer data. The ERA team determined that observer data is likely more representative for bycatch species; thus, in order to determine species-specific abundance trends of bigeye thresher in the Northwest Atlantic, the ERA team analyzed the available species-specific observer data from the U.S. Northwest Atlantic Pelagic Longline Fishery from 1992–2013. From this analysis, the ERA team determined that although the population of bigeye thresher shark in this area suffered a historical decline, the population has likely stabilized since 1990.

In the Western and Central Pacific, where bigeye threshers are most commonly observed and likely most abundant, trends in abundance are variable. As described earlier in the common thresher *Abundance* section, much of the fisheries data from this region are for the thresher complex (all three *Alopias* spp.), thus making it difficult to discern abundance trends for any one species in particular. In order to glean species-specific abundance trends for bigeye thresher, the ERA team conducted an analysis of species-specific observer data from the Hawaii-based pelagic longline fishery, which indicates that abundance of bigeye thresher has been relatively stable since 1994, and even potentially increasing in recent years. In contrast, fisheries data from the rest of the Western and Central Pacific region suggest thresher abundance may be on a decline, particularly in the last few years (Rice *et al.,* 2015). However, the latter data from the rest of the Western and Central Pacific is not specific to bigeye thresher, and rather analyzes the thresher complex (all three *Alopias* spp.). As such, interpreting these data is difficult, particularly since the second most common species reported is the general "thresher shark" category. Given that the bigeye thresher is typically the dominant thresher species in catch records from this region combined with its more tropical distribution, the ERA team made the assumption that the trends from the Western and Central Pacific are likely reflective of bigeye thresher. However, even given this assumption, the ERA team determined, and we agree, that the potential population decline in this region in the last few years, combined with a stable and potentially increasing abundance trend of bigeye thresher in the Central Pacific since 1994, indicates that the potential population decline of bigeye thresher is not Pacific-wide. Thus, the best available information indicates that the species' current level of abundance in the Western and Central Pacific is spatially variable, but not likely so low such that it places the species at a high risk of extinction throughout its global range, now or in the foreseeable future.

Abundance information from other portions of the species' range is relatively poor and unreliable or lacking altogether. In areas where data are lacking (*e.g.,* South Atlantic, Indian Ocean) it was difficult to discern if the population is stable or in decline. In a recent proposal developed by Sri Lanka to list all three thresher species under CITES Appendix II, a population decline of 83 percent was inferred for the Indian Ocean based on a study conducted in the Eastern and Central Pacific (Ward and Myers, 2005), because there is currently no confirmed stock separation between the Indian and Pacific Ocean stocks of the species. However, as previously described in this finding, the ERA team identified several caveats regarding the Ward and Myers (2005) study, including differences in survey locations as well as data types used (*e.g.,* fishery-independent vs. fishery-dependent) and seriously questioned the conclusions regarding the magnitude of decline for the thresher complex in this region. However, given the high fishing pressure in the Indian Ocean, coupled with the species' high bycatch-related mortality rates and low productivity (IOTC, 2014), the ERA team concluded that it is likely the species is experiencing some level of population decline in this region that may be similar to declines in other portions of the species' range; nevertheless, we do not have enough information to determine the magnitude of this decline and whether this decline is significantly contributing to the extinction risk of the global population.

In the South Atlantic, standardized CPUE data indicate that bigeye thresher abundance may have declined only slightly from 1978 to 2006 (Mourato *et al.,* 2008); however, the available CPUE time series ended in 2006 and best available information indicates that the main fishery catching bigeye threshers (the Brazilian Santos longline fishery) underwent several operational changes, including a shift in effort to more temperate waters, which may have reduced fishing pressure on bigeye thresher in this portion of its range. We could not find any other reliable abundance indices that indicate bigeye thresher has experienced a significant population decline in the Southwest Atlantic region.

Overall, there is no evidence to suggest that present abundance levels are so low, such that depensatory processes are at work. As previously noted, although it is likely that the bigeye thresher shark has experienced declines of varying magnitudes throughout its range due to fishing mortality, recent relative abundance data included in the status review report (Young *et al.,* 2015) suggest that abundance trends are highly variable throughout the species' global range, with populations increasing, stable, slightly declining, or showing no clear trend. We noted that bigeye threshers are still captured regularly throughout their range and the range does not appear to have contracted. Thus, based on the best available information, we conclude that the current abundance of bigeye thresher throughout its range is not contributing significantly to the species' risk of extinction, such that the species has a high risk of extinction throughout its global range, now or in the foreseeable future.

Growth Rate/Productivity

Similar to abundance, the ERA team expressed some concern regarding the effect of the bigeye thresher shark's growth rate and productivity on its risk of extinction. Bigeye thresher sharks exhibit life-history traits and population parameters that are on the low end of the spectrum among other shark species. The estimated growth coefficients confirm that the bigeye thresher is generally a slow-growing species. Relative to other thresher species, the bigeye thresher shark is the least fecund and productive, with a low intrinsic rate of population increase ($r = 0.009$ year^{-1}; Cortés *et al.*, 2012). These demographic parameters place bigeye thresher shark towards the slower growing sharks along the "fast-slow" continuum of population parameters calculated for 38 species of sharks (see Appendix 2 of Cortés (2002)), which means this species generally has a low potential to recover from exploitation. In addition, based on several Ecological Risk Assessments, bigeye threshers have been found to be the most susceptible to pelagic longline fisheries in the Atlantic and Indian Oceans when compared to other shark species. Based on the best available information, including the fact that most species of elasmobranchs require many years to mature and have relatively low fecundity compared to teleosts, these life history characteristics could pose a risk to this species in combination with threats that reduce its abundance, such as overutilization.

Spatial Structure/Connectivity

Like the common thresher, habitat characteristics that are important to the bigeye thresher are unknown, as are nursery areas. There is currently no evidence of female philopatry, the species is highly mobile, and there is little known about specific migration routes. It is also unknown if there are source-sink dynamics at work that may affect population growth or species' decline. Thus, based on the best available information, there is insufficient information to support the conclusion that spatial structure and connectivity pose significant risks to this species.

Diversity

Similar to the common thresher, the ERA team concluded, and we agree, that the current level of information regarding the bigeye thresher shark's diversity is either unavailable or unknown, such that the contribution of this factor to the extinction risk of the species cannot be determined at this time. Currently, there is no evidence to suggest the species is at risk due to a substantial change or loss of variation in genetic characteristics or gene flow among populations.

Summary of Factors Affecting the Bigeye Thresher Shark

As described previously, section 4(a)(1) of the ESA and NMFS implementing regulations (50 CFR 424.11(c)) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. The ERA team evaluated whether and the extent to which each of the foregoing factors contributed to the overall extinction risk of the global bigeye thresher shark population. This section briefly summarizes the ERA team's findings and our conclusions regarding threats to the common thresher shark. More details can be found in the status review report (Young *et al.*, 2015).

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The ERA team did not identify habitat destruction as a potential threat to the bigeye thresher shark. As described earlier (see *Species Description—Movement and Habitat Use section*) the bigeye thresher shark is a large, highly migratory oceanic and coastal species of shark found throughout the world in tropical and temperate seas (Compagno, 1984). Bigeye thresher sharks are found in a diverse spectrum of locations, including in coastal waters over continental shelves, on the high seas in the epipelagic zone far from land, in deep waters near the bottom on continental slopes, and sometimes in shallow inshore waters. They range from the surface and in the intertidal to at least 500 m deep, and have even been recorded as deep as 723 m (Nakano *et al.*, 2003), but mostly occur in depths below 100 m (Compagno, 2001); however, little else is known regarding specific habitat preferences or characteristics.

As previously described, the MSA requires NMFS to identify and describe EFH in FMPs, minimize the adverse effects of fishing on EFH, and identify actions to encourage the conservation and enhancement of EFH in the U.S. EEZ. Results from the two previously described NMFS-funded cooperative survey programs indicate the importance of coastal waters off the Atlantic east coast, from Maine to the Florida Keys, central Gulf of Mexico and localized areas off of Puerto Rico and the U.S. Virgin Islands (NMFS, 2009). As a side note, insufficient data are available to differentiate EFH by size classes in the Atlantic for the bigeye thresher shark; therefore, EFH is the same for all life stages. Since bigeye thresher shark EFH is defined as the water column or attributes of the water column, NMFS determined that there are minimal or no cumulative anticipated impacts to the EFH from gear used in U.S. HMS and non-HMS fisheries, basing its finding on an examination of published literature and anecdotal evidence (NMFS, 2006).

The bigeye thresher population off California and Oregon appears to be predominantly adult males (71 percent of observed catches are mature males), which range north to Oregon, and immature females, which primarily occur south of Monterey Bay and in the Southern California Bight. Essential Fish Habitat is described for two age classes: Late juveniles/subadults and adults. Neonates/early juveniles (~90 to 115 cm FL, 0 to 2 and 3 year olds) are not known to occur in the U.S. West Coast EEZ, thus EFH is not defined for this size class. For late juveniles/subadults (>115 cm FL and <155 cm FL males and <189 cm FL females), EFH is described as coastal and oceanic waters in epi- and mesopelagic zones from the U.S.-Mexico border north to 37° N. latitude off Davenport, California, South of 34° N. latitude from the 100 fm (183 m) isobath to the 2,000 fm (3,568 m) isobaths and north of 34° N. from the 800 fm (1,463 m) isobath out to the 2,200 fm (4,023 m) isobath. For adults (>154 cm FL males and >188 cm FL females) EFH is described as coastal and oceanic waters in epi-and mesopelagic zones from the U.S.-Mexico border north to 45° N. latitude off Cascade Head, Oregon. In southern California EFH is south of 34° N. latitude from the 100 fm (183 m) isobath out to the 2,000 fm (3,568 m) isobath and North of 34° N. latitude from the 800 fm (1,463 m) isobath out to the outer EEZ boundary.

In the U.S. Western Pacific, including Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, EFH for bigeye thresher is described identically to common thresher (refer back to the common thresher *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* section of this finding).

Likewise, bigeye thresher shark habitat in other parts of its range is assumed to be similar to that in the Northwest Atlantic and Gulf of Mexico, comprised of open ocean environments occurring over broad geographic ranges and characterized primarily by the water column attributes. As such, large-scale impacts, such as global climate change, that affect ocean temperatures, currents, and potentially food chain dynamics, may pose a threat to this species. Studies on the impacts of climate change specific to thresher sharks have not been conducted; however, there are a couple of studies on other pelagic shark species that occur in the range of the bigeye thresher shark (refer back to the common thresher *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* section for a summary of relevant climate change studies in which pelagic sharks have variable vulnerability to the effects of climate change). However, like the common thresher, the bigeye thresher shark is highly mobile throughout its range; and, although there is very little information on habitat use and pupping and nursery areas, there is no evidence to suggest its access to suitable habitat is restricted. Additionally, bigeye threshers are likely more confined by temperature and prey distributions than a particular habitat type. The highly migratory nature of bigeye threshers gives them the ability to shift their range or distribution to remain in an environment conducive to their physiological and ecological needs. Thus, it is very unlikely that the loss or degradation of any particular habitat type would have a substantial effect on the global bigeye thresher population. Further, there is currently no evidence to suggest a range contraction based on habitat degradation for the bigeye thresher shark. As a result, the ERA team concluded, and we agree, that the effect that habitat destruction, modification, or curtailment is having on the species' extinction risk is low. Therefore, based on the best available information, we conclude that current evidence does not indicate that there exists a present or threatened destruction, modification, or curtailment of the bigeye thresher shark's habitat or range.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Like the common thresher, the bigeye thresher is also considered a valuable bycatch species, which, when combined with its high at-vessel mortality rates and low productivity, makes this species more susceptible to overutilization. The ERA team assessed three different factors that may contribute to the overutilization of the bigeye thresher shark: Bycatch in commercial fisheries (including at-vessel and post-release mortality rates), recreational fisheries, and the global shark trade (including the trade of both bigeye thresher fins and meat). Similar to common thresher sharks, bigeye thresher sharks are caught as bycatch in many global fisheries, including bottom and pelagic longline fisheries, purse seine fisheries, coastal gillnet fisheries, and artisanal fisheries; however, as a primarily pelagic and tropical species (in contrast to the common thresher's more coastal and temperate distribution), the bigeye thresher shark is relatively common in the catches of tropical fisheries, particularly in the Western and Central Pacific and Indian Oceans. It is also relatively common in catches of fisheries operating in the Northwest and South Atlantic. Though it is generally not a target species in commercial fisheries, the bigeye thresher shark is valued for both its meat and fins, and is therefore valued as incidental catch for the international shark trade (Clarke *et al.*, 2006a; Dent and Clarke, 2015).

As noted previously in the *Evaluation of Demographic Risks—Abundance* section, there is very little information on the historical abundance, catch, and trends of bigeye thresher sharks, with the exception of U.S. data from the Northwest Atlantic and Central Pacific (*i.e.*, Hawaii). As described previously, although more countries and RFMOs are working towards better reporting of fish catches down to species level, catches of bigeye threshers have gone and continue to go unrecorded in many countries. Additionally, many catch records that do include thresher sharks do not differentiate between the *Alopias* species or shark species in general, and if they do, they are often plagued by species misidentifications. These numbers are also likely under-reported in catch records, as many records do not account for discards or they reflect dressed weights instead of live weights. Thus, the lack of catch data for bigeye thresher sharks makes it difficult to estimate rates of fishing mortality or conduct detailed quantitative analyses of the effects of fishing on bigeye thresher populations.

On the U.S. West Coast, utilization of bigeye thresher shark is likely minimal. Bigeye threshers sometimes co-occur with common threshers as incidental catch, but they are generally more prevalent offshore, especially north of Point Conception. The first reported catch within the U.S. West Coast EEZ occurred in 1963 when a bigeye thresher was taken in a set gillnet in southern California. Although it is now a regular incidental species in the drift net fishery (NMFS, 2009), it is estimated that bigeye threshers comprise approximately only nine percent of the total thresher catch. Overall, bigeye thresher represents a minor component of U.S. West Coast fisheries; individuals taken within the management area are thought to be on the edges of their habitat ranges, and they are presumably not overexploited, at least locally (PFMC, 2003). Additionally, regulations to control for overutilization of common threshers in this region (described previously) would also confer benefits to the bigeye thresher shark, which is evidenced by the similar trajectories of West Coast commercial landings of both species.

Farther south in the Eastern Pacific, the level of utilization of bigeye thresher is unclear, as there is currently very little information regarding the status of bigeye thresher in the Eastern Pacific. Bigeye threshers are known bycatch in purse-seine and longline fisheries operating in this region. In 2005, bigeye thresher represented the most incidentally caught shark species in the Korean longline fishery operating in the Eastern Pacific (between 1°48′ S. ~7°00′ S. and 142°00′ ~149°13′ W.), comprising 12.8 percent of the total shark catch (Kim *et al.*, 2006). The bigeye thresher is also the most prevalent thresher species caught as bycatch in purse-seine fisheries operating in the Eastern Pacific. As previously described, thresher sharks (*Alopias* spp.) collectively represented approximately three percent of the species observed during the Shark Characteristics Sampling Program, with bigeye threshers comprising one percent of the catch, and unidentified threshers representing 0.7 percent. Thresher bycatch in this fishery increased from 9 mt in 2010 to 17 mt in 2011, and has remained stable between 10–11 mt since.

Bigeye threshers are also reported in fisheries records from the principal port of Manta, Ecuador; however, they comprise a minor portion of the total shark catch and even the total thresher catch. In fact, the pelagic thresher is the dominant thresher species landed in Ecuador, comprising up to 92 percent of thresher shark landings (Reardon *et al.*, 2009), and representing 36 percent of the total shark catch. In contrast, the bigeye thresher comprises approximately 3 percent of the total shark catch in Ecuador (Amorim *et al.*, 2009). Thus, while Carr *et al.* (2013) reported that bigeye threshers and blue sharks comprised 87 percent of shark fins in a seizure of illegal fins from the Galapagos Marine Reserve, given that 64 percent of the thresher sharks from this catch had their heads removed, and genetic testing was not conducted to identify to species, there is some uncertainty as to whether all of the sharks were actually bigeye thresher. It is possible that some of the thresher sharks illegally taken were misidentified pelagic threshers. Thus, while bigeye thresher sharks are somewhat prevalent as bycatch in various fisheries in the Eastern Pacific Ocean, they seemingly comprise a relatively small portion of the total shark catch in several areas. Therefore, we conclude that overutilization is not likely occurring in this portion of the species' range, such that the species is experiencing an increased risk of extinction throughout its global range.

In the Western and Central Pacific, bigeye threshers are regularly caught as bycatch in longline fisheries throughout the region. Longline fishing effort in this region has steadily increased since 1995 primarily in the South Pacific, and nearly half the effort occurs in tropical and equatorial waters where bigeye threshers have shown the highest CPUEs (Matsunaga & Yokawa, 2013; Rice *et al.*, 2015). Several analyses of fisheries data are available from the Western and Central Pacific; however, as previously mentioned, most of the information available is for the thresher complex, with the exception of observer data from the Hawaii-based pelagic longline fishery. Bigeye thresher sharks are the third most frequently caught elasmobranch in Hawaii tuna fisheries and the most commonly encountered thresher species in the observer data. The Hawaii-based longline fishery has observed an increase in the number of bigeye threshers caught as bycatch on tuna targeted trips. While participation, number of hooks, and number of tuna targeted trips have been slowly increasing since 2010 (PIFSC, 2014), standardized CPUE derived from observer data indicates that abundance of bigeye thresher has been relatively stable since 1994, with a potentially substantial increase in recent years. Based on this information, the ERA team concluded, and we agree, that the bigeye thresher shark population appears relatively stable in this region of the Central Pacific Ocean.

The bigeye thresher shark appears to be an important species in other longline fisheries of the Western and Central Pacific as well. Some reliable fisheries data from Japanese longline observer data indicate that bigeye thresher was the second most commonly caught shark species from 1992–2006, comprising 10.9 percent of the total shark catch (Matsunaga and Yokawa, 2013). Catch estimates indicate that removals have been stable over the last decade, and some analyses indicate slight increases in catch rates of thresher sharks in certain areas, although no clear temporal trend was detected (Clarke, 2011; Lawson, 2011). The bigeye thresher is also an important species in Taiwanese longline fisheries targeting tuna, comprising approximately five percent of the total shark catch (Liu and Tsai, 2011). Although catches of bigeye threshers have increased over time in Taiwanese longline fisheries, information regarding corresponding effort is not available to discern abundance trends. As previously discussed, bigeye thresher appears to be a common bycatch species in RMI longline fisheries, with 1,636 bigeye thresher sharks caught from 2005–2009 (Bromhead *et al.* 2012); however, we could not discern any abundance trends from these data.

As described previously in the common thresher *Overutilization for Commercial, Recreational, Scientific or Educational Purposes* section, the most recent standardized CPUE data from 2002–2014 for the Western and Central Pacific based on data holdings of the SPC, show a decreasing trend for the thresher complex from 2011–2013 (Rice *et al.*, 2015). While the last 3 years of both the standardized and nominal thresher CPUEs show a decline, the standardized CPUE from the thresher complex is difficult to interpret, as the second most commonly reported thresher species is the general "thresher shark" category. Additionally, while it appears the thresher shark complex is declining sharply at the last data point, this is based on relatively few data, which may not be robust and likely exaggerates the trend in the last year. In terms of biological indicators, the majority of observed thresher sharks occurred in a region of the Central Pacific just south of Hawaii, where the lengths of both male and female sharks were relatively stable throughout the time period. Overall, despite increasing fishing pressure over the past 20 years, focused predominantly in tropical areas where all life stages of bigeye thresher would likely occur (including potential nursery areas), recent available abundance indices have not shown any significant or ongoing population decline that would be cause for concern. Based on this information, the ERA team did not deem the declining trend in the last 3 years to be so significant to conclude that overutilization is occurring throughout the entirety of the Western and Central Pacific. The ERA team emphasized, and we agree, that the present level of fishing pressure on bigeye thresher in this region is highly variable, both spatially and temporally, as evidenced by increasing trends in Hawaiian fisheries compared to slightly declining trends for the rest of the Western and Central Pacific. Thus, based on the best available information, current levels of bigeye thresher mortality in commercial fisheries are not likely contributing to overutilization of the species throughout the entirety of the Western and Central Pacific, such that the species has a high risk of extinction throughout its global range, now or in the foreseeable future.

In the Northwest Atlantic, the bigeye thresher is a common bycatch species in the U.S. pelagic longline fishery, with relatively high post-capture mortality rates. As previously discussed (see the common thresher *Overutilization* section), fisheries data from the Northwest Atlantic show a significant historical decline in the thresher population (common and bigeye threshers combined), likely due to exploitation of the species. While these data are not species-specific, the bigeye thresher is thought to be the more common of the two species. For example, observer data from 1992–2005 recorded 627 bigeye threshers, representing 81 percent of the identified thresher catch (in contrast to only 148 common thresher sharks recorded over the same time period, representing 19 percent of the identified thresher catch). This does not include the 1,067 thresher sharks that were not identified to species level (Baum and Blanchard, 2010). Nonetheless, despite the historical decline of thresher sharks in the Northwest Atlantic, the ERA team conducted a species-specific analysis using observer data from 1992–2013 and found no obvious change in the population trend over time for the bigeye thresher shark. This analysis indicates that the population in this region has likely stabilized since 1990. While we acknowledge that fishing pressure on thresher sharks began over two decades prior to the start of this time series (*i.e.*, estimated historical declines are not from virgin biomass and the stabilization of the bigeye thresher population is therefore at a diminished abundance), existing regulations in this portion of the species' range appear to be minimizing this threat (see *Inadequacy of Existing Regulatory Mechanisms* section below for more details). Therefore, the ERA team concluded, and we agree, that overutilization in this portion of the species' range is not likely significantly contributing to a high risk of extinction for the species throughout its global range, now or in the foreseeable future.

As previously noted, fisheries data for thresher sharks in the Northeast Atlantic and Mediterranean are scarce and unreliable due to the mixing of both thresher species in the records. The bigeye thresher has been poorly documented in the Mediterranean and is considered scarce or rare (Amorim *et al.*, 2009); most of the available information from this region is for the common thresher. In fact, the bigeye thresher is often referred to as "False Thresher" in this region as a result of a perceived low local value (Cavanagh and Gibson, 2007). Although available data on catch trends for this species are lacking in the region, an increasing number of new records in recent years from the eastern Mediterranean (sometimes multiple captures) demonstrate that this species is widely distributed to the east of Malta, occurring in the waters off Israel (Levantine basin), in the Aegean Sea off Turkey and southern Greece, and off southern Crete. Evidence from offshore pelagic fisheries in southern Sicily and Malta indicate that bigeye thresher is caught in unknown numbers each year, but routinely discarded at sea (Cavanagh and Gibson, 2007). However, due to the lack of information regarding bigeye thresher catch trends, it is difficult to determine the status of bigeye thresher in the Mediterranean, and whether the species' scarce abundance in this region is a result of population declines due to fishing pressure or its natural rarity, or both.

In the South Atlantic, bigeye thresher sharks are caught as bycatch in various longline fisheries, including those of Brazil, Uruguay, Taiwan, Japan, Venezuela, and Portugal, where they have shown to have high bycatch-related mortality rates. However, as previously noted, there is little information on the catch rates or trends in abundance of thresher sharks in the South Atlantic, with some countries still failing to collect or report shark data. Based on observer data from 1994–2000, bigeye thresher represented only 2.2 percent of the total shark catch in the Venezuelan pelagic longline fishery; however, without corresponding effort data, discernable temporal trends are unavailable. Similarly, low CPUE rates were observed in Uruguayan longline fisheries despite high fishing pressure from 2001 to 2005; however, with such a short time series, temporal trends were also not discernable from this fishery. The only fishery for which a temporal trend is available is from the prominent Brazilian Santos and Guaruja tuna longline fishery that operates in the Southwest Atlantic. Standardized CPUE of bigeye thresher from this fishery showed a slight decline from 1978 to 2006, with bigeye threshers disappearing from the catch altogether in 2006. However, a shift in the distribution of fishing effort also occurred in 2006, moving from the equatorial Atlantic between 7° N. and 5° S. to around 20° S. Thus, the disappearance of bigeye threshers from Brazilian longline catch can likely be attributed to the shift of fishing effort into more temperate waters, where the species is less prevalent. Given the high fishing pressure in this portion of the range, with evidence of high bycatch-related mortality and slight declines in CPUE, overutilization is potentially negatively affecting the species in this part of its range. However, with only a slight decline in CPUE over the past several decades, and a geographical shift in effort of the Brazilian longline fleet to more temperate latitudes, fishing pressure on bigeye thresher may be on a decline in this part of its range and is likely not contributing to overutilization of the species such that it places the species at a high risk of extinction throughout its global range, now or in the foreseeable future.

Overall, according to an ERA conducted in 2008 by the ICCAT Standing Committee on Research and Statistics for shark and ray species typically taken in Atlantic pelagic longline fisheries, Atlantic bigeye thresher sharks were identified as one of the least productive and most vulnerable sharks of the species examined. In addition, other more recent ERAs also found that the bigeye thresher's combination of low productivity and high susceptibility to pelagic longline gear places the species at a high risk of overexploitation (Cortés *et al.* 2010; Cortés *et al.*, 2012). The bigeye thresher's vulnerability to Atlantic fisheries is further confirmed by Gallagher *et al.* (2014) who found bigeye thresher emerged as one of the most vulnerable to longline bycatch mortality, as a result of the species' combined low fecundity and productivity, moderate age of maturity ranking, and low mean survival rate when caught (around 48 percent). However, despite the species' vulnerability to pelagic longline fisheries in the Atlantic, there is no evidence to suggest that the Atlantic bigeye thresher population has declined so significantly such that the species' global persistence is presently in question.

The bigeye thresher shark has been reported in the catches of several fisheries operating in the Indian Ocean. While there are no abundance trends for bigeye thresher in the Indian Ocean, the IOTC acknowledges, and the ERA team agreed, that bycatch rates and associated mortality of bigeye thresher shark are likely high in Indian Ocean longline fisheries. Landings data reported to the IOTC are reported for the thresher complex and not identified to species, thus it is difficult to interpret this information with respect to bigeye thresher. However, given the bigeye thresher's high hooking mortality rate, the intensive fishing pressure in this region may be contributing to the overutilization of the species in the Indian Ocean. We note that this threat may also be exacerbated by the species' relatively high vulnerability to fisheries due to its slow growth and low productivity. Thus, in the absence of any trend data, we concluded conservatively that overutilization in the form of bycatch-related fishing mortality is likely contributing to population declines and increasing this species' risk of extinction in the Indian Ocean in the foreseeable future, although there are significant uncertainties. However, it should also be noted that longline fishing effort in the Indian Ocean appears to be declining as well as shifting to more temperate waters (Ardill *et al.*, 2011) where bigeye threshers are less prevalent, which could potentially reduce fishing pressure on the species. Overall, based on the best available information, the ERA team agreed that overutilization of bigeye thresher in the form of indirect and direct fishing pressure is likely occurring in the Indian Ocean, but also noted that overutilization of the species in one particular region does not necessarily equate to a high risk of extinction to the global population, now or in the foreseeable future.

The ERA team did not identify recreational fisheries as a threat to the bigeye thresher shark throughout its range. Although common threshers comprise an important aspect of the recreational fishery in southern

California, it is not known whether bigeye threshers enter the California recreational fishery on any regular basis, but presumably only few are taken. Further, there are no records of bigeye threshers from the recreational fishery off Oregon or Washington (NMFS, 2007), and in fact, a strict prohibition on recreational fishing of all thresher species was implemented in Washington State in 2013. Farther west in Hawaii, there were no catch records of bigeye thresher in the Hawaii recreational survey from 2003–2014 (Pers. comm. with NMFS Fisheries Statistics Division, October 14, 2015). In the Northwest Atlantic, data are generally extremely sparse for this species in U.S. recreational fisheries. Since prohibition of this species was implemented in 1999, there has been no observed recreational harvest of this species, with the exception of years 2002 and 2006, in which expanded survey estimates (which are highly unreliable due to large associated variances) estimated that 65 and 42 bigeye thresher sharks were caught and harvested, respectively (NMFS 2012; 2014). In fact, in most years of recreational data, dating back to 1981 and combining information from the Large Pelagics Survey and general Marine Recreational Information Program survey, bigeye threshers are typically not observed, with only 5 years showing bigeye threshers either landed or released alive throughout the Northwest Atlantic and Gulf of Mexico (Pers. comm. from NMFS, Fisheries Statistics Division, October 14, 2015). We could not find any additional information on bigeye thresher in recreational fisheries outside of the United States. Thus, based on the best available information, we conclude that recreational fisheries are not currently a threat to the bigeye thresher shark, such that it places the species at an increased risk of extinction throughout its global range.

Finally, the ERA team assessed the threat of the shark trade to the global extinction risk of the bigeye thresher. As previously described, the thresher complex has been reported as comprising approximately 2.3 percent of the shark fin trade; however, the proportion of bigeye thresher in the fin trade is unknown. As discussed previously in the common thresher assessment, based on genetic analyses of fins in markets of major shark fin exporting countries throughout the range of the species, including Taiwan, Indonesia, and UAE, bigeye thresher fins have commonly been identified as present. In fact, bigeye thresher fins comprised approximately 7 percent of fins in numerous markets across Indonesia, which is one of the largest shark catching nations in the world. However, overall, the ERA team concluded that thresher sharks as a whole represent a relatively small portion of the fin trade, and the situation regarding the fin trade may be improving, as evidenced by a decline in both price and demand for fins. In fact, landings of thresher sharks in particular have declined in both Hawaii and American Samoa, which has been attributed to regulations prohibiting shark finning in the United States. Additionally, and as previously noted, thresher sharks were not historically identified as "preferred" or "first choice" species for fins, with some traders considering thresher fins to be of low quality and value (Rose, 1996; FAO, 2002; Clarke, pers. comm. 2015). Furthermore, recent studies suggest that due to a waning interest in fins, the shark fin market is declining, and a surge in the trade of shark meat has occurred in recent years (Dent and Clarke, 2015; Eriksson and Clarke, 2015). However, as previously discussed in the common thresher *Overutilization for Commercial, Recreational, Scientific or Educational Purposes* section, it is unlikely that this shift in the shark trade would create new markets or increased demand for thresher species. This is particularly true for the bigeye thresher because it is not as highly regarded for human consumption due to the lower quality of the meat (Vannuccini, 1999). Therefore, based on the best available information, the ERA team concluded, and we agree, that although the bigeye thresher shark is likely more prevalent in the shark fin trade relative to the common thresher, finning for the shark fin trade is not a threat contributing to the overutilization of the species to the point that it significantly increases the species' risk of extinction throughout its global range, now or in the foreseeable future.

Disease or Predation

The ERA team did not identify disease or predation as potential threats to the bigeye thresher shark, as they did not find evidence to suggest that either is presently contributing significantly to the species' risk of extinction. Like common thresher sharks, bigeye thresher sharks likely carry a range of parasites, including external copepods and cestodes. As previously described, nine species of copepods, genus *Nemesis*, parasitize thresher sharks. These parasites attach themselves to gill filaments, and can cause tissue damage which can then impair respiration in the segments of the gills (Benz and Adamson, 1999). The known parasite fauna of the bigeye thresher and associated references are reviewed in Gruber and Compagno (1981) and detailed in the status review report (see Young *et al.*, 2015); however, the magnitude of impact these parasites may have on the health of bigeye thresher shark is unknown, but likely minimal.

Predation is also not thought to be a factor influencing bigeye thresher numbers, as the bigeye thresher is a large shark with limited numbers of predators during all life stages. While they may be preyed upon by mako sharks, white sharks, killer whales, and even large sea lions, there is no information to suggest that this level of opportunistic predation is affecting bigeye thresher populations. Therefore, based on the best available information, the ERA team concluded, and we agree, that neither disease nor predation is currently placing the species in danger of extinction throughout its global range, now or in the foreseeable future.

Inadequacy of Existing Regulatory Mechanisms

The ERA team evaluated existing regulatory mechanisms to determine whether they may be inadequate to address threats to the bigeye thresher shark. Existing regulatory mechanisms may include Federal, state, and international regulations for commercial and recreational fisheries, as well as the international shark trade. Below is a brief description and evaluation of current and relevant domestic and international management measures that may affect the bigeye thresher shark. Since many of the broader regulatory mechanisms that may affect sharks in general were already discussed in the common thresher *Inadequacy of Existing Regulatory Mechanisms* section of this finding (*e.g.*, U.S. regulations to conserve and manage shark species), the following will only cover the existing regulatory mechanisms specific to bigeye thresher, and in the regions where overutilization was deemed a potential threat to the species or in regions that were not addressed in the common thresher assessment (*e.g.*, Caribbean). More information on these domestic and international management measures can be found in the status review report (Young *et al.*, 2015) and other recent status reviews of other shark species (Miller *et al.*, 2013; 2014).

In the Northwest Atlantic, in addition to all of the previously described regulatory mechanisms regarding U.S. HMS fisheries for pelagic sharks, the U.S. FMP for Atlantic Tunas, Swordfish, and Sharks implemented a specific measure in 1999 that effectively prohibited retention of bigeye thresher sharks, among several other pelagic shark species. The designation of bigeye thresher shark as a prohibited species was a precautionary measure to ensure that directed fisheries and/or markets did not develop. However, we recognize that bigeye threshers are still incidentally caught as bycatch on pelagic longlines and in gillnets in the Northwest Atlantic, and have relatively high bycatch-related mortality rates. For example, since the prohibition on bigeye threshers came into effect in 2000, approximately 1,493 lb, dressed weight (677 kg) of bigeye thresher were landed in the Atlantic (NMFS, 2012; 2014) despite its prohibited status, although this equates to few sharks based on average weight. Further, the United States reported that bigeye thresher represented one of the largest amounts of dead discards in the Atlantic commercial fleet, reporting a total of 46 mt in 2009 and 27 mt in 2010 (NOAA, 2010 and 2011 Reports to ICCAT). However, in the most recent available report to ICCAT, bigeye thresher sharks were not listed among the largest amounts of dead discards. In fact, in 2012 and 2013, NMFS reported prohibited shark interactions of bigeye thresher to ICCAT, with a total of 38 and 33 mt of bigeye threshers caught as bycatch, respectively, with more than half released alive (NMFS, 2013; 2014). Therefore, these bycatch numbers are down significantly from earlier reports of hundreds of thresher sharks caught as bycatch in the late 1980s and early 1990s (NMFS 2009 Report to ICCAT), which was prior to management regulations. Although we recognize that bigeye threshers are still caught and discarded in these fisheries, the ERA team determined that current levels may be sustainable, as evidenced by a continuing stable CPUE trend based on observer data, which accounts for bycatch-related mortality. In fact, as previously discussed, recent standardized CPUE data for the bigeye thresher shark suggest the population has stabilized since the 1990s, which corresponds to the advent of pelagic shark species management as well as species-specific management measures for the bigeye thresher.

In addition, the HMS Management Division recently published an amendment to the Consolidated HMS FMP that specifically addresses Atlantic HMS fishery management measures in the U.S. Caribbean territories (77 FR 59842; Oct. 1, 2012). Due to substantial differences between some segments of the U.S. Caribbean HMS fisheries and the HMS fisheries that occur off the mainland of the United States (including permit possession, vessel size, availability of processing and cold storage facilities, trip lengths, profit margins, and local consumption of catches), the HMS Management Division implemented measures to better manage the traditional small-scale commercial HMS fishing fleet in the U.S. Caribbean Region. Among other things, this rule created an HMS Commercial Caribbean Small Boat (CCSB) permit, which: Allows fishing for and sales of big-eye, albacore, yellowfin, and skipjack tunas, Atlantic swordfish, and Atlantic sharks within local U.S. Caribbean market; collects HMS landings data through cooperation with NMFS and existing territorial government programs; authorizes specific gears; is restricted to vessels less than or equal to 45 feet (13.7 m) length overall; and may not be held in combination with any other Atlantic HMS vessel permits. However, at this time, fishermen who hold the CCSB permit are prohibited from retaining Atlantic sharks, and are restricted to fishing with only rod and reel, handline, and bandit gear under the permit. Both the CCSB and Atlantic HMS regulations will help protect bigeye thresher sharks while in the Northwest Atlantic Ocean, Gulf of Mexico, and Caribbean Sea.

In addition to U.S. regulatory mechanisms, there are also international regulatory mechanisms specific to bigeye thresher in the Atlantic Ocean. In 2009, ICCAT adopted Recommendation 09–07, which prohibits the retention of bigeye threshers caught in association with ICCAT-managed fisheries. Each Contracting Party to ICCAT is responsible for implementing this recommendation, and currently there are approximately 47 contracting parties (including the United States, the EU, Brazil, Venezuela, Senegal, Mauritania, and many other Central American and West African countries). The ICCAT Recommendation 09–07 includes a special exception for a Mexican small-scale coastal fishery with a catch of less than 110 fish. Based on the nominal catch data from ICCAT, it appears that catches of bigeye thresher sharks by ICCAT vessels have been on a decline since the implementation of this measure. Prior to Recommendation 09–07, average reported bigeye thresher catch was approximately 82 mt per year (range: 0 to 185 mt; 1993–2009). In 2014, only fleets operating under U.S., Brazil, and Trinidad and Tobago flags reported catches of bigeye thresher sharks (total = 25 mt). These declining numbers reported by ICCAT vessels may be a reflection of the efficacy of Recommendation 09–07 for reducing the number of landed bigeye thresher sharks, as well as the previously described regulation implemented by Spain, a main thresher catching country in the Atlantic, that prohibits the landing and sale of any thresher species. Although these retention bans do not address bycatch-related mortality, they likely provide some benefit to the bigeye thresher shark, particularly given that the species was historically retained as bycatch in ICCAT fisheries. Therefore, although the bigeye thresher has relatively high vulnerability (susceptibility and productivity) to ICCAT fisheries, regulations prohibiting the retention of bigeye thresher sharks help to minimize the threat of overutilization of this species within the Atlantic Ocean.

In the Western and Central Pacific, the Western and Central Pacific Fisheries Commission (WCPFC) is the main regulatory body for the management of sharks. Unlike ICCAT and IOTC, the WCPFC has no regulatory measures specific for the conservation of thresher sharks. However, thresher sharks are designated as "key shark species" in the WCPFC area, which means they are nominated for the purposes of either data provision and/or assessment. Thresher sharks were nominated for assessment and are thus included in the WCPFC's Shark Research Plan. Additionally, the WCPFC has implemented a number of conservation management measures (CMMs), that, although have variable implementation rates by the WCPFC members (CCMs), likely confer some conservation benefits for bigeye thresher, including reporting requirements and a five percent fin to carcass ratio (CMM 2010–07). As previously discussed in the common thresher *Inadequacy of Existing Regulatory Mechanisms* section of this finding, we note a number of issues regarding the five percent fin to carcass ratio. However, in a recent study of longline fisheries (Rice *et al.* 2015), the percentage of key shark species that were finned reduced from 2010 to 2013, with the last year of the study showing an increase in finning and a decrease in the number of sharks retained. The decrease in finning from 2010 to 2013 corresponded with an increase in retention, which would be the expectation if fishers were beginning to retain the carcass to adhere to CMM 2010–07 (the five percent fin to carcass rule) (Rice *et al.* 2015). However, this could also be due to the growing demand for shark meat and a waning interest in shark fins, as discussed earlier (see Dent and Clarke (2015) and Eriksson and Clarke (2015) for more details). Despite the increase in finning of key shark species in the last year of the Rice *et al.* (2015) study, the fate of thresher sharks in longline gear shows a declining trend in the number of threshers finned since 2007 in the Western and Central Pacific Ocean. This may be indicative of the efficacy of conservation measures in this region, although this remains uncertain. More recently, however, the WCPFC also adopted CMM 2014–05 (effective July 2015) that requires each national fleet to ban the use of wire trace as branch lines or leaders and shark lines, which has been shown to significantly reduce shark bycatch in the first place.

As previously noted, inadequate regulatory mechanisms to control for overutilization of thresher species were noted as problematic throughout the Indian Ocean. The IOTC is the only RFMO that has specific regulations for all three thresher species. In 2010, the IOTC implemented Resolution 12/09 on the conservation of thresher species, which prohibits retaining on board, transhipping, landing, storing, selling or offering for sale any part or whole carcass of thresher sharks of all the species of the family Alopiidae. However, despite the prohibition on landings of *Alopias* spp., reported landings of unidentified thresher species have continued through 2012, indicating that regulations in the Indian Ocean may not be fully implemented or enforced. In fact, thresher sharks were marketed in local markets up until at least early 2011 despite IOTC Resolution 12/09. However, the IOTC reported 0 mt of bigeye thresher in their most recent catch estimates for 2013 and 2014 (IOTC, 2015), which may indicate that CPCs are beginning to adhere to the retention ban. Nevertheless, the IOTC itself acknowledges that its own retention ban for thresher sharks may not be adequate for the bigeye thresher shark due to its high bycatch-related mortality rates, low productivity, as well as high rates of illegal fishing and the reluctance of CPCs to adequately report discards in the Indian Ocean. However, as of 2015, the IOTC recommended that the retention ban remain in place, as it likely confers some conservation benefit (albeit limited) to bigeye thresher. Thus, due to the high fishing pressure in this region, combined with likely ineffective implementation and enforcement of regulations, the IOTC's main regulation to conserve thresher species may be ineffective (IOTC, 2014). Like the WCPFC, the IOTC also prohibits fins onboard that weigh more than five percent of the weight of sharks to curb the practice of shark finning. As previously noted, these regulations do not prohibit the fishing of sharks and there are a number of issues related to the five percent fin to carcass ratio. However, unlike the WCPFC, we have no information regarding the trend of finning of thresher sharks to determine whether these regulations have had any effect on the fate of thresher sharks in Indian Ocean longline fisheries. Thus, the ERA team concluded, and we agree, that regulatory mechanisms are likely inadequate to control for potential overutilization of bigeye thresher shark in the Indian Ocean. However, as previously noted, due to a lack of abundance estimates and catch records for bigeye thresher in this region, the magnitude of population decline in the Indian Ocean could not be determined. Further, the ERA team also concluded that overutilization and inadequate existing regulatory mechanisms in one portion of the species' range does not automatically place the species at a high risk of extinction globally, now or in the foreseeable future.

Although inadequate regulations to control for overutilization via the shark fin trade were an initial concern to the ERA team, as the bigeye thresher was identified to species in several genetic tests of fins in various portions of its range, and seemed to comprise a large portion of fins in markets across Indonesia (one of the largest shark catching countries in the world), we note that overall, thresher fins do not make up a large portion of the shark fin trade (~2.3 percent) relative to other species, such as blue, mako, and hammerhead sharks. Additionally, the reported 2.3 percent is for the thresher complex and likely includes a large number of pelagic thresher sharks, given their range and distribution overlaps with bigeye thresher, they comprise a significant component of thresher fins identified in the aforementioned genetic studies, and they comprise the majority of thresher catches in some areas. As noted previously, thresher shark fins are also not considered highly valued or "first choice" among some traders. Finally, and as previously discussed, the situation regarding the fin trade appears to be improving in some areas (refer back to common thresher—*Overutilization for Commercial, Recreational, Scientific, and Educational Purposes* section), with an overall decline in the global fin trade occurring in recent years. For example, a decrease in landings of thresher sharks was reported in Hawaii and American Samoa, which has been attributed to regulations that prohibit shark finning in the United States, and may also be indicative of the efficacy of these regulations. Further, several RFMOs, countries and local governments have enacted both shark finning and species-specific retention bans that likely confer some benefit to bigeye thresher sharks by reducing the number of sharks retained solely for their fins. We note these retention and finning bans may not be effective in some areas, such as the Indian Ocean; however, they may be more effective in other portions of the species' range. For example, the fate of thresher sharks as "finned" in the Western and Central Pacific has been on a decline since 2007. Additionally, since the implementation of ICCAT Recommendation 09–07 on the conservation of thresher sharks, as well as Spain's national retention ban for all thresher species, reported landings of bigeye thresher to ICCAT have significantly declined. This indicates that at least in some portions of the species' range, regulations may be adequate in their intended purpose. Overall, although bigeye thresher shark fins are somewhat prevalent in the shark fin trade, the effect of the shark fin trade (from both legal and illegal harvest) on their extinction risk was not viewed as a significant threat. Additionally, as both the supply and demand for shark fins continue to decrease (as demonstrated by the increase in finning regulations and decrease in shark fin consumption and price, respectively), so should the threat of finning and illegal harvest. While an increase in the demand for shark meat is apparent in recent years, we have no evidence to suggest that the bigeye thresher will experience new or increased demand as a result of this shift in the market (refer back to the common thresher *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* section for more details), particularly since bigeye thresher meat is not highly regarded as food due to its lower quality.

Based on the above review of regulatory measures (in addition to the regulations described in Young *et al.*, 2015), the ERA team concluded that these existing regulations are adequate and do not contribute to the species' extinction risk throughout its range, now or in the foreseeable future. The team noted that some areas of the species' range do have adequate measures in place to prevent overutilization, such as in the Northwest Atlantic where U.S. fishery management measures are helping to monitor the catch of bigeye threshers, preventing any further population declines. These U.S. conservation and management measures (as previously summarized) are viewed as adequate in decreasing the extinction risk to the bigeye thresher shark in this portion of its range by minimizing demographic risks (preventing further abundance declines) and the threat of overutilization (strictly prohibiting bigeye threshers in both commercial and recreational fisheries) currently and in the foreseeable future. Likewise, U.S. management regulations for the Hawaii-based pelagic longline fishery are also likely adequate in reducing impacts to the bigeye thresher, as evidenced by a stable and possibly increasing abundance trend of the species in this region of the Central Pacific. Although regulations specific to bigeye thresher sharks are lacking in other parts of its range, it is unclear whether overutilization presents a significant threat to the species in these regions (see *Overutilization for Commercial, Recreational, Scientific or Educational Purposes* section discussed earlier in this notice), and thus it is difficult to determine whether the inadequacy of current regulatory measures is placing the species at an increased risk of extinction throughout its global range. Overall, implementation and enforcement of regulatory mechanisms is variable throughout the range of the bigeye thresher. We recognize the mere existence of regulatory mechanisms does not necessarily equate to their effectiveness in achieving their intended purpose. Issues related to community awareness, compliance, enforcement, regional priorities, and complex political climates within many countries in which thresher sharks occur can limit the effectiveness of well-intended statutes and legislation. However, based on the best available information, we find that although improvements are needed in the monitoring and reporting of fishery interactions of this species, the threat of inadequate existing regulatory mechanisms is not likely causing the species to have a high risk of extinction throughout its global range, now or in the foreseeable future.

Other Natural or Manmade Threats

As previously described, the ERA team assessed the effects of climate change as a potential threat to bigeye thresher sharks; however, since most of the studied impacts from climate change are habitat-focused, the threat of climate change is addressed in the *Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range* section of this finding. Other threats that fall under Factor E (ESA section 4(a)(1)(E)), including pollution and potential threats to important prey species are addressed in the status review report (Young *et al.*, 2015), but were not identified as threats that rose to the level of increasing the species' risk of extinction.

Overall Risk Summary

Guided by the results from the demographic risk analysis and threats assessment, the ERA team members used their informed professional judgment to make an overall extinction risk determination for the bigeye thresher shark now and in the foreseeable future. The ERA team concluded that the bigeye thresher shark is currently at a low risk of extinction. However, due to a lack of abundance trends and catch data for a large portion of the species' range, the ERA team expressed uncertainty by spreading their likelihood points across all categories. Likelihood points attributed to the overall level of extinction risk categories were as follows: Low Risk (34.5/70), Moderate Risk (30.5/70), High Risk (5/70). The ERA team reiterated that across the species' range, regional abundance trends are highly variable, with no clear trend for the global population. There is also no evidence to suggest depensatory processes are currently at work. The species is found globally, throughout its historical range, appears to be well-adapted, and is not limited by habitat. Although the global abundance of bigeye thresher shark is highly uncertain, none of the available regional studies that reported recent standardized CPUEs (Northwest Atlantic, South Atlantic, Hawaii, Western and Central Pacific), and give some insight into the species' current abundance, show a significant or continuing decline such that demographic risks are significantly contributing to the species' risk of extinction. Based on most recent fisheries data, the ERA team concluded that at least some populations of bigeye thresher are not overutilized and current fishing pressure and associated mortality on these populations may be sustainable. We recognize that the bigeye thresher's tropical distribution may increase the species' exposure to many high seas industrial fisheries operations throughout its range, particularly where fishing pressure is likely highest within the Indo-Pacific. This is evidenced by the fact that the species is commonly observed or caught throughout this portion of its range (including where regulations may be inadequate—which may increase the impact of this potential threat on its contribution to the extinction risk of the species) and is present in several genetic tests of shark fins throughout its range, indicating that the species is utilized to some degree in the shark fin trade. We recognize that the bigeye thresher may be experiencing some degree of population decline in the Western and Central Pacific and Indian Oceans; however, the magnitude of decline in the Western and Central Pacific was considered to be "slight" in recent years, with a conservative assumption that the available CPUE and landings data (which are reported for the thresher complex (all three *Alopias* spp.)) are indeed reflective of trends in bigeye thresher. Additionally, the potential decline in the Indian Ocean is considered to be highly uncertain given that fisheries data (including nominal and standardized CPUE trends) are largely lacking from this portion of the species' range, with landings data also pooled for all thresher species. However, the ERA team agreed that the potential declines of bigeye thresher in these portions of its range are not likely to be so severe such that they place the species at a high risk of extinction throughout its global range, now or in the foreseeable future.

The available information indicates that most of the observed declines occurred historically, before any significant management regulations were in place. Since then, current regulatory measures in some parts of the bigeye thresher range are reducing the threat of overutilization, and likely preventing further abundance declines in these portions in the foreseeable future. Therefore, the ERA team concluded that at least some populations are not suffering from overutilization and are well managed, thus decreasing the likelihood of extinction of the global population. The ERA team acknowledged that given the species' low productivity and high bycatch-related mortality rates, it is generally more vulnerable to unsustainable levels of exploitation. However, given the best available information, the ERA team concluded that over the next 50 years, it is unlikely that the bigeye thresher shark has a high risk of extinction throughout its global range, now or in the foreseeable future, due to current trends in its abundance, productivity, spatial structure, or diversity or influenced by depensatory processes, effects of environmental stochasticity, or catastrophic events.

Significant Portion of Its Range

If we find that the bigeye thresher is not in danger of extinction now or in the foreseeable future throughout all of its range, we must go on to evaluate whether the species is in danger of extinction, or likely to become so in the foreseeable future, in a "significant portion of its range" (79 FR 37578; July 1, 2014). Please refer back to the common thresher *Significant Portion of Its Range* section of this finding for detailed information regarding the SPR Policy and process.

Applying the SPR policy to the bigeye thresher shark, we first evaluated whether there is substantial information indicating that the species may be threatened or endangered in any portion of its range. After a review of the best available information, the ERA team concluded, and we agree, that the Indian Ocean likely has more concentrated threats than other portions of the bigeye thresher's range due to the intensive fishing pressure in this region, combined with the species' high rates of bycatch-related mortality and low productivity. However, with virtually no information regarding abundance trends or catch data of bigeye thresher from this region, we cannot conclude that the species is in danger of extinction or likely to become so in the foreseeable future in this portion of its range. Even if the bigeye thresher was in danger of extinction in the Indian Ocean (or likely to become so in the foreseeable future), the ERA team concluded that the loss of the Indian Ocean population of bigeye thresher would not result in the remainder of the species being endangered or threatened. In particular, we did not find substantial evidence to indicate that the loss of this portion would result in a level of abundance for the remainder of the species to be so low or variable, that it would cause the species to be at a moderate or high risk of extinction due to environmental variation, anthropogenic perturbations, or depensatory processes. Bigeye thresher sharks are highly mobile, globally distributed, and have no known barriers to migration. Although there is preliminary evidence of possible genetic partitioning between ocean basins, this was based on one study with a limited sample size (see Trejo, 2005_ENREF_224). Thus, there is no substantial evidence to suggest that the loss of the Indian Ocean portion of its range would severely fragment and isolate the species to the point where the remaining populations would be at risk of extinction from demographic processes. In fact, we found no information that would suggest that the remaining populations could not repopulate the lost portion, and, if for some reason the species could not repopulate the lost portion, it would still not constitute a significant risk of extinction to the remaining populations. We did not find substantial evidence to indicate that the loss of genetic diversity from one portion (such as loss of the Indian Ocean population) would result in the remaining population lacking enough genetic diversity to allow for adaptations to changing environmental conditions. Additionally, areas exhibiting source-sink dynamics, which could affect the survival of the species, were not evident in any part of the bigeye thresher shark range. There is also no evidence of a portion that encompasses aspects that are important to specific life history events but another portion that does not, where loss of the former portion would severely impact the growth, reproduction, or survival of the entire species. There is also limited information regarding nursery grounds or other important habitats utilized by the species that could be considered limiting factors for the species' survival. In fact, we found evidence that there are likely reproductive grounds and nursery areas in all three major ocean basins. In other words, the viability of the species does not appear to depend on the productivity of the population or the environmental characteristics in any one portion. Overall, we did not find any evidence to suggest that any specific portion of the species' range had increased importance over any other with respect to the species' survival. As such, we did not identify any portions of the bigeye thresher range, including the Indian Ocean, that meet both criteria under the SPR Policy (*i.e.*, the portion is biologically significant *and* the species may be in danger of extinction in that portion, or likely to become so within the foreseeable).

Final Determination

Section 4(b)(1) of the ESA requires that NMFS make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information, including the petition, public comments submitted on the 90-day finding (80 FR 48061; August 11, 2015), the status review report (Young *et al.*, 2015), and other published and unpublished information, and have consulted with species experts and individuals familiar with bigeye thresher sharks. We considered each of the ESA Section 4(a)(1) factors to determine whether it presented an extinction risk to the species on its own. We also considered the combination of those factors to determine whether they collectively contributed to the extinction of the species. As previously explained, no portion of the species' range is considered significant, so we concluded that the species is not threatened or endangered in a significant portion of its range. Therefore, our determination set forth below is based on a synthesis and integration of the foregoing information, factors and considerations, and their effects on the status of the species throughout its entire range.

We conclude that the bigeye thresher shark is not presently in danger of extinction, nor is it likely to become so in the foreseeable future, throughout all of its range. We summarize the factors supporting this conclusion as follows: (1) The species is broadly distributed over a large geographic range, with no barrier to dispersal; (2) its current range is indistinguishable from its historical range and there is no evidence of habitat loss or destruction; (3) while the species possesses life history characteristics that increase its vulnerability to harvest, and has been found to be more susceptible to pelagic longline fisheries compared to other shark species (based on results from Ecological Risk Assessments), the species is still regularly encountered in fisheries and appears sustainable in some portions of its range despite decades of fishing pressure; (4) the best available information indicates that abundance is variable across the species' range, with reports of localized population declines but also evidence of stable and/or increasing abundance estimates; (5) based on the ERA team's assessment, while the current population size has likely declined from historical numbers, it is sufficient to maintain population viability into the foreseeable future; (6) there is no evidence that disease or predation is contributing to an increased risk of extinction of the species; (7) existing regulatory mechanisms to address the most important threats to the species (harvest) are not inadequate throughout its range, such that they contribute significantly to the species' risk of extinction globally; (8) there is no evidence that other natural or manmade factors are contributing to an increased risk of extinction of the species; and (9) while the global population has likely declined from historical numbers, there is no evidence that the species is currently suffering from depensatory processes (such as reduced likelihood of finding a mate or mate choice or diminished fertilization and recruitment success) or is at risk of extinction due to environmental variation or anthropogenic perturbations.

Based on these findings, we conclude that the bigeye thresher shark is not currently in danger of extinction throughout all or a significant portion of its range, nor is it likely to become so within the foreseeable future. Accordingly, the bigeye thresher shark does not meet the definition of a threatened or endangered species, and thus, the bigeye thresher shark does not warrant listing as threatened or endangered at this time.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 28, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–07440 Filed 3–31–16; 8:45 am]

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Part IV

The President

Memorandum of March 29, 2016—Mental Health and Substance Use Disorder Parity Task Force

Executive Order 13723—Establishing the Inherent Resolve Campaign Medal

Notice of March 30, 2016—Continuation of the National Emergency With Respect to South Sudan

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Presidential Documents

Title 3—

The President

Memorandum of March 29, 2016

Mental Health and Substance Use Disorder Parity Task Force

Memorandum for the Heads of Executive Departments and Agencies

My Administration has made behavioral health a priority and taken a number of steps to improve the prevention, early intervention, and treatment of mental health and substance use disorders. These actions are especially important in light of the prescription drug abuse and heroin epidemic as well as the suicide and substance use-related fatalities that have reversed increases in longevity in certain populations. One important response has been the expansion and implementation of mental health and substance use disorder parity protections to ensure that coverage for these benefits is comparable to coverage for medical and surgical care. The Affordable Care Act builds on the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act to expand mental health and substance use disorder benefits and Federal parity protections for more than 60 million Americans. To realize the promise of coverage expansion and parity protections in helping individuals with mental health and substance use disorders, executive departments and agencies need to work together to ensure that Americans are benefiting from the Federal parity protections the law intends. To that end, I hereby direct the following:

Section 1. *Mental Health and Substance Use Disorder Parity Task Force.* There is established an interagency Mental Health and Substance Use Disorder Parity Task Force (Task Force), which will identify and promote best practices for executive departments and agencies (agencies), as well as State agencies, to better ensure compliance with and implementation of requirements related to mental health and substance use disorder parity, and determine areas that would benefit from further guidance. The Director of the Domestic Policy Council shall serve as Chair of the Task Force.

(a) *Membership of the Task Force.* In addition to the Director of the Domestic Policy Council, the Task Force shall consist of the heads of the following agencies and offices, or their designees:

(i) the Department of the Treasury;

(ii) the Department of Defense;

(iii) the Department of Justice;

(iv) the Department of Labor;

(v) the Department of Health and Human Services;

(vi) the Department of Veterans Affairs;

(vii) the Office of Personnel Management;

(viii) the Office of National Drug Control Policy; and

(ix) such other agencies or offices as the President may designate.

At the request of the Chair, the Task Force may establish subgroups consisting exclusively of Task Force members or their designees under this section, as appropriate.

(b) *Administration of the Task Force.* The Department of Health and Human Services shall provide funding and administrative support for the Task Force to the extent permitted by law and within existing appropriations.

Sec. 2. *Mission and Functions of the Task Force.* The Task Force shall coordinate across agencies to:

(a) identify and promote best practices for compliance and implementation;

(b) identify and address gaps in guidance, particularly with regard to substance use disorder parity; and

(c) implement actions during its tenure and at its conclusion to advance parity in mental health and substance use disorder treatment.

Sec. 3. *Outreach*. Consistent with the objectives set out in section 2 of this memorandum, the Task Force, in accordance with applicable law, shall conduct outreach to patients, consumer advocates, health care providers, specialists in mental health care and substance use disorder treatment, employers, insurers, State regulators, and other stakeholders as the Task Force deems appropriate.

Sec. 4. *Transparency and Reports*. The Task Force shall present to the President a report before October 31, 2016, on its findings and recommendations, which shall be made public.

Sec. 5. *General Provisions*. (a) The heads of agencies shall assist and provide information to the Task Force, consistent with applicable law, as may be necessary to carry out the functions of the Task Force.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) The Secretary of Health and Human Services is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, March 29, 2016

[FR Doc. 2016–07698
Filed 3–31–16; 11:15 am]
Billing code 4150–42–P

Presidential Documents

Executive Order 13723 of March 30, 2016

Establishing the Inherent Resolve Campaign Medal

By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

Section 1. *Inherent Resolve Campaign Medal*. There is hereby established the Inherent Resolve Campaign Medal with suitable appurtenances. Except as limited in section 2 of this order, and under regulations to be prescribed by the Secretary of Defense, or under regulations to be prescribed by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, the Inherent Resolve Campaign Medal shall be awarded to members of the Armed Forces of the United States who serve or have served in Iraq, Syria, or contiguous waters or airspace on or after June 15, 2014, and before a terminal date to be prescribed by the Secretary of Defense.

Sec. 2. *Relationship to Other Awards*. Notwithstanding section 1 of Executive Order 13289 of March 12, 2003, Establishing the Global War on Terrorism Expeditionary Medal, any member who qualified for that medal by reason of service in Iraq, Syria, or contiguous waters or airspace between June 15, 2014, and a terminal date to be determined by the Secretary of Defense, shall remain qualified for that medal. Upon application, a member by reason of service in Iraq, Syria, or contiguous waters or airspace may be awarded the Inherent Resolve Campaign Medal in lieu of the Global War on Terrorism Expeditionary Medal. A member may be awarded either the Inherent Resolve Campaign Medal or the Global War on Terrorism Expeditionary Medal by reason of service in Iraq, Syria, or contiguous waters or airspace. No member shall be entitled to the award of more than one of these two medals for the same period of service.

Sec. 3. *Posthumous Award*. The Inherent Resolve Campaign Medal may be awarded posthumously to any person covered by and under regulations prescribed in accordance with the first section of this order.

Sec. 4. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
March 30, 2016.

[FR Doc. 2016–07703
Filed 3–31–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Notice of March 30, 2016

Continuation of the National Emergency With Respect to South Sudan

On April 3, 2014, by Executive Order 13664, I declared a national emergency, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to South Sudan, which has been marked by activities that threaten the peace, security, or stability of South Sudan and the surrounding region, including widespread violence and atrocities, human rights abuses, recruitment and use of child soldiers, attacks on peacekeepers, and obstruction of humanitarian operations.

The situation in and in relation to South Sudan continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on April 3, 2014, to deal with that threat must continue in effect beyond April 3, 2016. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13664.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
March 30, 2016.

[FR Doc. 2016–07705
Filed 3–31–16; 11:15 am]
Billing code 3295–F6–P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *http://www.archives.gov/federal-register/laws.*

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H.R. 1831/P.L. 114–140
Evidence-Based Policymaking Commission Act of 2016 (Mar. 30, 2016; 130 Stat. 317)

H.R. 4721/P.L. 114–141
Airport and Airway Extension Act of 2016 (Mar. 30, 2016; 130 Stat. 322)
Last List March 23, 2016

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 2016

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	Apr 18	Apr 22	May 2	May 6	May 16	May 31	Jun 30
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April 14	Apr 29	May 5	May 16	May 19	May 31	Jun 13	Jul 13
April 15	May 2	May 6	May 16	May 20	May 31	Jun 14	Jul 14
April 18	May 3	May 9	May 18	May 23	Jun 2	Jun 17	Jul 18
April 19	May 4	May 10	May 19	May 24	Jun 3	Jun 20	Jul 18
April 20	May 5	May 11	May 20	May 25	Jun 6	Jun 20	Jul 19
April 21	May 6	May 12	May 23	May 26	Jun 6	Jun 20	Jul 20
April 22	May 9	May 13	May 23	May 27	Jun 6	Jun 21	Jul 21
April 25	May 10	May 16	May 25	May 31	Jun 9	Jun 24	Jul 25
April 26	May 11	May 17	May 26	May 31	Jun 10	Jun 27	Jul 25
April 27	May 12	May 18	May 27	Jun 1	Jun 13	Jun 27	Jul 26
April 28	May 13	May 19	May 31	Jun 2	Jun 13	Jun 27	Jul 27
April 29	May 16	May 20	May 31	Jun 3	Jun 13	Jun 28	Jul 28